TITLE 18—CRIMES AND CRIMINAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 645, 62 Stat. 683

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I.	Crimes	1
II.	Criminal Procedure	3001
III.	Prisons and Prisoners	4001
IV.	Correction of Youthful Offenders	5001
V.	Immunity of Witnesses	6001

AMENDMENTS

1970—Pub. L. 91-452, title II, § 201(b), Oct. 15, 1970, 84 Stat. 928, added Part V.

POSITIVE LAW; CITATION

Section 1 of act June 25, 1948, ch. 645, 62 Stat. 683, provided in part that: "Title 18 of the United States Code, entitled 'Crimes and Criminal Procedure', is hereby revised, codified and enacted into positive law, and may be cited as 'Title 18, U.S.C., § —.' "

LEGISLATIVE CONSTRUCTION

Section 19 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that: "No inference of a legislative construction is to be drawn by reason of the chapter in Title 18, Crimes and Criminal Procedure, as set out in section 1 of this Act, in which any particular section is placed, nor by reason of the catchlines used in such title."

SEPARABILITY OF PROVISIONS

Section 18 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that: "If any part of Title 18, Crimes and Criminal Procedure, as set out in section 1 of this Act, shall be held invalid the remainder shall not be affected thereby."

EFFECTIVE DATE

Section 20 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that the revision of this title shall be effective Sept. 1, 1948.

EXISTING RIGHTS OR LIABILITIES

Section 21 of act June 25, 1948, ch. 645, 62 Stat. 862, provided in part that any right or liabilities now existing under repealed sections or parts thereof shall not be affected by the repeal.

REPEALED, TRANSFERRED, AND OMITTED SECTIONS

All former sections of Title 18 were repealed, transferred to other titles, or omitted by said act June 25, 1948, except for sections 595, 644, 726-1, 726a, 729, 730, and 732 which were repealed by act June 25, 1948, ch. 646, 62 Stat. 687, the act revising and codifying Title 28, Judiciary and Judicial Procedure, into positive law.

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[1] Heading of chapter amended by Pub. L. 87-849, Oct. 23, 1962, 76 Stat. 1119 without amending analysis.

[1] Heading of chapter amended by Pub. L. 86-710, Sept. 6, 1960, 74 Stat. 808 without amending analysis.

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AMENDMENTS

1971—Pub. L. 91-644, title IV, § 17, Jan. 2, 1971, 84 Stat. 1891, added item 18.

1970—Pub. L. 91-513, title III, § 1101(b)(1)(B), Oct. 27, 1970, 84 Stat. 1292, struck out item "68. Narcotics".

Pub. L. 91-452, title IX, § 901(b), title XI, § 1102(b), Oct. 15, 1970, 84 Stat. 947, 959, added items 40 and 96.

1968—Pub. L. 90-351, title IV, § 905, June 19, 1968, 82 Stat. 234, added item 44.

Pub. L. 90-321, title II, § 202(b), May 29, 1968, 82 Stat. 162, added item 42.

Pub. L. 90-284, title I, § 104(b), title X, § 1002(b), Apr. 11, 1968, 82 Stat. 77, 92, added items 12 and 102.

1965—Pub. L. 89-141, § 3, Aug. 28, 1965, 79 Stat. 581, added item 84.

1956—Act Aug. 1, 1956, ch. 825, § 2(a), 70 Stat. 798, substituted "Chapter 3.—Animals, Birds, Fish, and Plants" for "Chapter 3.—Animals, Birds, and Fish".

Act July 18, 1956, ch. 629, § 202, 70 Stat. 575, added item 68.

Act July 14, 1956, ch. 595, § 2, 70 Stat. 540 added item 2.

1949—Act May 24, 1949, ch. 139, § 1, 63 Stat. 89 struck the words "constituting crimes" out of chapter 21 catchline, and added item 50.

CHAPTER 1—GENERAL PROVISIONS

Sec.

1. Offenses classified.
2. Principals.
3. Accessory after the fact.
4. Misprision of felony.
5. United States defined.
6. Department and agency defined.
7. Special maritime and territorial jurisdiction of the United States defined.
8. Obligation or other security of the United States defined.
9. Vessel of the United States defined.
10. Interstate commerce and foreign commerce defined.
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12. United States Postal Service defined.
13. Laws of States adopted for areas within Federal jurisdiction.
14. Applicability to Canal Zone; definition.
15. Obligation or other security of foreign government defined.

SENATE REVISION AMENDMENT

In the analysis of sections under this chapter heading, a new item, "14. Applicability to Canal Zone.", was inserted by Senate amendment, to follow underneath item 13, inasmuch as a new section 14, with such a catchline, was inserted, by Senate amendment, in this chapter. See Senate Report No. 1620, amendments Nos. 1 and 3, 80th Cong.

[1] Chapter added without adding item 119 to analysis.

AMENDMENTS

1970—Pub. L. 91-375 § 6(j)(1), Aug. 12, 1970, 84 Stat. 777, inserted "United States" preceding "Postal Service" in item 12.

1962—Pub. L. 87-845, § 3(b), Oct. 18, 1962, 76A Stat. 698, inserted "; definition" in item 14.

1958—Pub. L. 85-921, § 4, Sept. 2, 1958, 72 Stat. 1771, added item 15.

NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

Pub. L. 89-801, Nov. 8, 1966, 80 Stat. 1516, as amended by Pub. L. 91-39, July 8, 1969, 83 Stat. 44, provided for the establishment of the National Commission on Reform of Federal Criminal Laws, its membership, duties, compensation of the members, the Director, and the staff of the Commission, established the Advisory Committee on Reform of Federal Criminal Laws, required the Commission to submit interim reports to the President and the Congress and to submit a final report within four years from Nov. 8, 1966, and further provided that the Commission shall cease to exist sixty days after the submission of the final report.

EX. ORD. NO. 11396. COORDINATION BY ATTORNEY GENERAL OF FEDERAL LAW ENFORCEMENT AND CRIME PREVENTION PROGRAMS

Ex. Ord. No. 11396, Feb. 7, 1968, 33 F.R. 2689, provided:

WHEREAS the problem of crime in America today presents the Nation with a major challenge calling for maximum law enforcement efforts at every level of Government;

WHEREAS coordination of all Federal Criminal law enforcement activities and crime prevention programs is desirable in order to achieve more effective results;

WHEREAS the Federal Government has acknowledged the need to provide assistance to State and local law enforcement agencies in the development and administration of programs directed to the prevention and control of crime:

WHEREAS to provide such assistance the Congress has authorized various departments and agencies of the Federal Government to develop programs which may benefit State and local efforts directed at the prevention and control of crime, and the coordination of such programs is desirable to develop and administer them most effectively; and

WHEREAS the Attorney General, as the chief law officer of the Federal Government, is charged with the responsibility for all prosecutions for violations of the Federal criminal statutes and is authorized under the Law Enforcement Assistance Act of 1965 (79 Stat. 828) [formerly set out as a note preceding section 3001 of this title] to cooperate with and assist State, local, or other public or private agencies in matters relating to law enforcement organization, techniques and practices, and the prevention and control of crime.

NOW, THEREFORE, by virtue of the authority vested in the President by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. The Attorney General is hereby designated to facilitate and coordinate (1) the criminal law enforcement activities and crime prevention programs of all Federal departments and agencies, and (2) the activities of such departments, and agencies relating to the development and implementation of Federal programs which are designed, in whole or in substantial part, to assist State and local law enforcement agencies and crime prevention activities. The Attorney General may promulgate such rules and regulations and take such actions as he shall deem necessary or appropriate to carry out his functions under this Order.

SEC. 2. Each Federal department and agency is directed to cooperate with the Attorney General in the performance of his functions under this Order and shall, to the extent permitted by law and within the

limits of available funds, furnish him such reports, information, and assistance as he may request.

LYNDON B. JOHNSON.

EX. ORD. NO. 11534. NATIONAL COUNCIL ON ORGANIZED CRIME

Ex. Ord. No. 11534, June 4, 1970, 35 F.R. 8865, provided:

WHEREAS organized crime is a problem of national scope affecting numerous cities and states;

WHEREAS the problem of organized crime presents the Nation with a major challenge calling for coordinated Federal law enforcement efforts of maximum effectiveness;

WHEREAS it is necessary to formulate a national strategy for the elimination of organized crime:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

There is hereby created a National Council on Organized Crime which shall be composed of the Attorney General, who shall be Chairman; the Secretary of the Treasury; the Secretary of Labor; the Postmaster General; the Chairman of the Securities and Exchange Commission; the Assistant Attorney General, Criminal Division; the Assistant Attorney General, Tax Division; the Assistant Secretary of the Treasury for Enforcement and Operations; the Assistant Secretary of the Treasury for Tax Policy; the Administrator of the Law Enforcement Assistance Administration; the Director of the Federal Bureau of Investigation; the Director of the Bureau of Narcotics and Dangerous Drugs; the Director of the United States Secret Service; the Commissioner of Customs; the Commissioner of Immigration and Naturalization; the Commissioner of Internal Revenue; the Chief Counsel of the Internal Revenue Service; and the Chief of the Organized Crime and Racketeering Section, Criminal Division, Department of Justice. It shall be the responsibility of the Council to formulate a national strategy for the elimination of organized crime. The Council shall meet at the call of the Attorney General.

RICHARD NIXON.

TRANSFER OF FUNCTIONS

The Bureau of Narcotics and Dangerous Drugs, including the office of Director thereof, in the Department of Justice, referred to in Ex. Ord. No. 11534, was abolished by Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 2 of 1973 also created in the Department of Justice a single, comprehensive agency for the enforcement of drug laws to be known as the Drug Enforcement Administration, empowered the Attorney General to authorize the performance by officers, employees, and agencies of the Department of functions transferred to him, and directed the Attorney General to coordinate all drug law enforcement functions to assure maximum cooperation between the Drug Enforcement Administration, the Federal Bureau of Investigation, and the other units of the Department of Justice involved in drug law enforcement.

§ 1. Offenses classified

Notwithstanding any Act of Congress to the contrary:

(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

(2) Any other offense is a misdemeanor.

(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense.

(June 25, 1948, ch. 645, 62 Stat. 684.)

HISTORICAL AND REVISION NOTES

Based on title 18 (Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152; Dec. 16, 1930, ch. 15, 46 Stat. 1029).

Clarification of felony and misdemeanor punishments.—The former Committee on Revision of the Laws of the House received from members of the Federal bench and bar numerous requests that the inconsistency between the provisions of section 541 of title 18, U.S.C., 1940 ed., and the 29 sections listed below, be eliminated.

Said 29 sections appear in the United States Code, 1940 ed., as listed:

Title	*Section*
8	138
8	139
8	142
8	143
8	279
8	281
10	15
10	866(e)
11	205(p)
12	95
12	581
12	591
12	592
12	1121
12	1311
15	13a
18	402(2)
18	709
19	1305
19	1593
19	1600
19	1601
21	333(a), (b)
22	131.
38	103
46	808
46	1228
49	10
49	121

Several of these sections will appear in this revision and in all such instances the language denominating the crime as a misdemeanor was deleted.

United States District Judge C. C. Wyche, of the Western District of South Carolina, suggested that said section 541 be repealed and that a new section be enacted defining felonies and misdemeanors according to nature of offense instead of by punishment to be inflicted.

United States District Judge W. Calvin Chestnut, of the District of Maryland, suggested a clarification of the definition and classification of Federal crimes-treason and possibly those providing capital punishment, felonies, misdemeanors, and petty offenses.

This section as revised conforms substantially with a draft submitted by the Lawyers' Club of Los Angeles through Rollin L. McNitt, chairman of its legislative committee.

Two circuit courts of appeals have held that if a statute specifically designated a crime as a "misdemeanor" but prescribed a punishment which would bring it within the definition of a felony under section 541 of title 18, U.S.C., 1940 ed., the definition was controlling, notwithstanding the specific designation of the crime as a "misdemeanor." (See *Hoss* v. *United States*, Okl. 1916, 232 F. 328, 146 C.C.A. 376; and *Sheridan* v. *United States*, Or. 1916, 236 F. 305, 149 C.C.A. 437, certiorari denied, 1916, 37 S. Ct. 402, 243 U.S. 638, 61 L. ed. 942.)

One district court, however, has twice ruled that the specific description of a crime as a "misdemeanor" was controlling. (See *United States* v. *Venturini*, D.C. Ala. 1931, 1 F. Supp. 213 and *Chapman* v. *United States*, D.C. Ala. 1931, 3 F. Supp. 900.)

The Supreme Court of the United States has never specifically passed upon this point. (See however, *Carroll* v. *United States*, 1924, 45 S. Ct. 280, 267 U.S. 132, 69 L. ed. 543.)

The word "misdemeanor" is used in paragraph (3) in preference to the word "offenses" to conform to the interpretation of "petty offenses" by the Supreme

Court of the United States in *Duke* v. *United States* (1937, 57 S. Ct. 835, 301 U.S. 492, 81 L. ed. 1243), wherein the Court stated that the evident object of the proviso, now paragraph (3), was to bring about a "subdivision of misdemeanors of minor gravity to be known as petty offenses."

Confinement in common jail.—Word "imprisonment" in paragraph (3) was substituted for "confinement in a common jail", since it is unnecessary to describe the place of confinement in view of section 4082 of this title, which provides that all persons convicted of an offense against the United States shall be committed for such terms of imprisonment as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinement where the sentences of all such persons shall be served.

Omission of hard labor provisions.—Words "without hard labor" before "for a period of six months" were omitted to conform to policy followed by codifiers of 1909 Criminal Code, and because such a provision is obsolete in view of section 4082 of this title, authorizing commitment to the custody of the Attorney General and sections 4001 and 4121 et seq. of this title, making all Federal prisoners subject to whatever discipline may be prescribed in the prisons to which they are committed. (See S. Rept. 10, pt. I, pp. 12 and 13, 60th Cong., 1st sess., to accompany S. 2982.)

Omission of information or complaint.—The provision "and all such petty offenses may be prosecuted upon information or complaint" was omitted as covered by rule 7(a) of the Federal Rules of Criminal Procedure.

Reconciliation of punishment provisions.—A comparative study was made of the penalty provisions of all offenses enumerated in part I of this title. In attempting to reconcile inconsistent and incongruous punishments for offenses involving the same degree of moral turpitude, the following criteria were generally observed.

1. Heinous felonies: For a felony involving a high degree of moral turpitude, such as treason, murder, kidnapping, robbery, etc., a severe penalty was considered justified.

2. Ordinary felonies: For a felony involving a lesser degree of moral turpitude than a heinous felony, a maximum imprisonment of 5 years was adopted. At present numerous statutes, such as the National Motor Vehicle Theft Act and the White Slave Traffic Act, carry the 5-year imprisonment penalty, while fraud, filing false statements, etc., carry a 10-year imprisonment penalty. These discrepancies seem incongruous, especially when it is remembered that the maximum penalty is rarely imposed.

3. Offense mala prohibita: For violations of regulatory statutes, constituting mala prohibita, a maximum imprisonment penalty of 1 year seemed adequate. This prevents the stigma and consequence of a felony conviction from attaching to the defendant and, on the other hand, would facilitate and expedite prosecutions by making it possible to prosecute by information. Moreover, juries frequently are reluctant to convict any defendants if they know the potential maximum penalty is excessive, although it is seldom imposed in actual practice.

4. Miscellaneous: All 18-month imprisonment penalties were eliminated. They were increased if the nature of the offense warranted it or reduced to 1 year in order that the offense be made a misdemeanor.

Cross References

Embezzlement, etc., from Federal Reserve and member banks as exception to definitions of this section, see sections 656 and 1005 of this title.

Failure to collect or pay over tax or attempt to defeat or evade tax as felony, see sections 7201 and 7202 of Title 26, Internal Revenue Code.

Federal employees, strikes against Government or advocacy of its overthrow as a felony, see section 1918 of this title.

Masters of sealed vessel failing to proceed to port of destination and deliver cargo to customs officers as felony, see section 1464 of Title 19, Customs Duties.

Narcotic addicts, definition of felony, see section 4251 of this title and section 2901 of Title 28, Judiciary and Judicial Procedure.

National conservation recreational area regulations, violation as petty offense, see section 460k-3 of Title 16, Conservation.

Penitentiary imprisonment for misdemeanor prohibited unless by consent, see section 4083 of this title.

Punishment for acts declared in Merchant Marine Act, 1936 to be a misdemeanor to be by fine of not more than $10,000 or imprisonment for not less than one or more than five years, or both, see section 1228 of Title 46, Shipping.

Punishment for offenses connected with storage of agricultural products in warehouses, see section 270 of Title 7, Agriculture.

Punishment for violations of regulations, limitations and restrictions prescribed by Secretary of Treasury for member banks of Federal Reserve System, see section 95 of Title 12, Banks and Banking.

Receiving, accepting or contracting by officer of United States with informer in customs or navigation forfeitures, as felony, see section 1620 of Title 19, Customs Duties.

Representation of defendants charged with other than petty offenses, see section 3006A of this title.

Solicitation of, or contract for, fees for obtaining benefits for veterans punishable by fine of $500 or imprisonment for not exceeding two years, or both, see section 3405 of Title 38, Veterans' Benefits.

Willful failure to file return, pay tax, or keep records as misdemeanor, see section 7203 of Title 26, Internal Revenue Code.

Willful making and signing false tax return, statement, or other document as felony, see section 7206 of Title 26.

Federal Rules of Criminal Procedure

Joinder, see rule 8, Appendix to this title.

Section Referred to in Other Sections

This section is referred to in sections 3156, 3172, 4251 of this title; title 8 section 1182; title 16 sections 460k-3, 460n-8; title 28 section 2901.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(June 25, 1948, ch. 645, 62 Stat. 684; Oct. 31, 1951, ch. 655, § 17b, 65 Stat. 717.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 550 (Mar. 4, 1909, ch. 321, § 332, 35 Stat. 1152).

Section 2(a) comprises section 550 of title 18, U.S.C., 1940 ed., without change except in minor matters of phraseology.

Section 2(b) is added to permit the deletion from many sections throughout the revision of such phrases as "causes or procures".

The section as revised makes clear the legislative intent to punish as a principal not only one who directly commits an offense and one who "aids, abets, counsels, commands, induces or procures" another to commit an offense, but also anyone who causes the doing of an act which if done by him directly would render him guilty of an offense against the United States.

It removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.

This accords with the following decisions: *Rothenburg* v. *United States*, 1918, 38 S. Ct. 18, 245 U.S. 480, 62 L. Ed. 414, and *United States* v. *Hodorowicz*, C. C. A. Ill. 1939, 105 F. 2d 218, certiorari denied, 60 S. Ct. 108, 308 U.S. 584, 84 L. Ed. 489. *United States* v. *Giles*, 1937, 57 S. Ct. 340, 300 U.S. 41, 81 L. Ed. 493, rehearing denied, 57 S. Ct. 505, 300 U.S. 687, 81 L. Ed. 888.

AMENDMENTS

1951—Subsec. (a). Act Oct. 31, 1951, inserted "punishable as".

Subsec. (b). Act Oct. 31, 1951, inserted "willfully" preceding "causes", and "or another" after "him", and substituted "is punishable as a principal" in lieu of "is also a principal and punishable as such".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1962 of this title; title 49 section 1473.

§ 3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 684.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 551 (Mar. 4, 1909, ch. 321, § 333, 35 Stat. 1152).

The first paragraph is new. It is based upon authority of *Skelly* v. *United States* (C. C. A. Okl. 1935, 76 F. 2d 483, certiorari denied, 1935, 55 S. Ct. 914, 295 U.S. 757, 79 L. ed. 1699), where the court defined an accessory after the fact as—

one who knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon in order to hinder the felon's apprehension, trial, or punishment—

and cited Jones' Blackstone, books 3 and 4, page 2204; *U.S.* v. *Hartwell* (Fed. Cas. No. 15,318); *Albritton* v. *State* (32 Fla. 358, 13 So. 955); *State* v. *Davis* (14 R. I. 281); *Schleeter* v. *Commonwealth* (218 Ky. 72, 290 S. W. 1075). (See also *State* v. *Potter*, 1942, 221 N. C. 153, 19 S. E. 2d 257; *Hunter* v. *State*, 1935, 128 Tex. Cr. R. 191, 79 S. W. 2d 855; *State* v. *Wells*, 1940, 195 La. 754, 197 So. 419.)

The second paragraph is from section 551 of title 18, U.S.C., 1940 ed. Here only slight changes were made in phraseology.

§ 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 684.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C. 1940 ed., § 251 (Mar. 4, 1909, ch. 321, § 146, 35 Stat. 1114).

Changes in phraseology only.

CROSS REFERENCES

Concealing escaped prisoners, see section 1072 of this title.

Concealing or harboring persons engaged in espionage, see section 792 of this title.

Concealing persons from arrest, see section 1071 of this title.

Harboring fugitives from justice, see section 1071 et. seq. of this title.

§ 5. United States defined

The term "United States", as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 39, 133, 346, 381, 502, and 632, and section 40 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231).

Section consolidates the first sentence of section 39, all of sections 133, 346, and 632, and the second sentences, respectively, of sections 381 and 502, all of title 18, U.S.C., 1940 ed., and section 40 of title 50, U.S.C., 1940 ed., War and National Defense, with minor changes in phraseology.

All of these sections and parts of sections were derived from section 1 of title XIII of said act of June 15, 1917. Said section 40 of title 50, U.S.C., War and National Defense, has also been retained in that title, as it still relates to some sections therein which were not transferred to this title.

The remainder of said section 39 of title 18, U.S.C., 1940 ed., which was derived from sections 2, 3, and 4 of title XIII of the act of June 15, 1917, relating to jurisdiction and other matters, is almost entirely obsolete. The provisions still in force are incorporated in section 3241 of this title.

The remaining provisions of said sections 381 and 502 of title 18, U.S.C., 1940 ed., which were derived from sources other than said section 1 of title XIII of the act of June 15, 1917, are incorporated in sections 1364 and 2275 of this title.

SENATE REVISION AMENDMENT

Words, ", except the Canal Zone.", were inserted in this section by Senate amendment. See Senate Report No. 1620, amendment No. 2, 80th Cong.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 112, 878, 1116, 1201 this title.

§ 6. Department and agency defined

As used in this title:

The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive,

legislative, or judicial branches of the government.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

This section defines the terms "department" and "agency" of the United States. The word "department" appears 57 times in title 18, U.S.C., 1940 ed., and the word "agency" 14 times. It was considered necessary to define clearly these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See *United States* v. *Germaine*, 1878, 99 U.S. 508, 25 L. ed. 482, for definition of words "department" or "head of department.")

The phrase "corporation in which the United States has a proprietary interest" is intended to include those governmental corporations in which stock is not actually issued, as well as those in which stock is owned by the United States. It excludes those corporations in which the interest of the Government is customdial or incidental.

REFERENCES IN TEXT

Section 1 of Title 5, referred to in the text, was repealed by Pub. L. 89-554, § 8, Sept. 6, 1966, 80 Stat. 632, and is now covered by section 101 of Title 5, Government Organization and Employees.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(June 25, 1948, ch. 645, 62 Stat. 685; July 12, 1952, ch. 695, 66 Stat. 589.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 451 (Mar. 4, 1909, ch. 321, § 272, 35 Stat. 1142; June 11, 1940, ch. 323, 54 Stat. 304).

The words "The term 'special maritime and territorial jurisdiction of the United States' as used in this title includes:" were substituted for the words "The crimes and offenses defined in sections 451-468 of this title shall be punished as herein prescribed."

This section first appeared in the 1909 Criminal Code. It made it possible to combine in one chapter all the penal provisions covering acts within the admiralty and maritime jurisdiction without the necessity of repeating in each section the places covered.

The present section has made possible the allocation of the diverse provisions of chapter 11 of Title 18, U.S.C., 1940 ed., to particular chapters restricted to particular offenses, as contemplated by the alphabetical chapter arrangement.

In several revised sections of said chapter 11 the words "within the special maritime and territorial jurisdiction of the United States" have been added. Thus the jurisdictional limitation will be preserved in all sections of said chapter 11 describing an offense.

Enumeration of names of Great Lakes was omitted as unnecessary.

Other minor changes were necessary now that the section defines a term rather than the place of commission of crime or offense; however, the extent of the special jurisdiction as originally enacted has been carefully followed.

AMENDMENTS

1952—Subsec. (5). Act July 12, 1952, added subsec. (5).

CROSS REFERENCES

Laws of states adopted for areas within federal jurisdiction, see section 13 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13, 112, 878, 1116, 1201 of this title; title 15 sections 1175, 1243; title 49 section 1472.

§ 8. Obligation or other security of the United States defined

The term "obligation or other security of the United States" includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomina-

tion, issued under any Act of Congress, and canceled United States stamps.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 261 (Mar. 4, 1909, ch. 321, § 147, 35 Stat. 1115; Jan. 27, 1938, ch. 10, § 3, 52 Stat. 7).

The terms of this section were general enough to justify its inclusion in this chapter rather than retaining it in the chapter on "Counterfeiting" where the terms which it specifically defines are set out in sections 471–476, 478, 481, 483, 492, and 504 of this title.

Words "Federal Reserve notes, Federal Reserve bank notes" were inserted before "coupons" because such notes have almost supplanted national bank currency.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Connecting parts of different notes, see section 484 of this title.

Contraband articles, application to, see section 787 of Title 49, Transportation.

Dealing in counterfeit obligations or securities, see section 473 of this title.

Embezzlement and theft of tools and materials for counterfeiting purposes, see section 642 of this title.

Falsely making, forging, counterfeiting or altering obligation or security, see section 471 of this title.

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

Imitating obligations or securities; advertisements, see section 475 of this title.

Plates or stones for counterfeiting obligations or securities, see section 474 of this title.

Possessing or selling impressions of tools used for obligations or securities, see section 477 of this title.

Taking impressions of tools used for obligations or securities, see section 476 of this title.

Transportation, sale or receipt of stolen securities, application to "obligation or other security of the United States," see sections 2314, 2315 of this title.

Uttering counterfeit obligations or securities, see section 472 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2023; title 49 section 787.

§ 9. Vessel of the United States defined

The term "vessel of the United States", as used in this title, means a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 501 (Mar. 4, 1909, ch. 321, § 310, 35 Stat. 1148).

Section is made applicable to the entire title rather than to sections 481 et seq. of title 18, U.S.C., 1940 ed.

Minor changes in phraseology were made.

CROSS REFERENCES

Vessel as involving liquor traffic violations, see section 3615 of this title.

§ 10. Interstate commerce and foreign commerce defined

The term "interstate commerce", as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

The term "foreign commerce", as used in this title, includes commerce with a foreign country.

(June 25, 1948, ch. 645, 62 Stat. 686.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 408, 408b, 414(a), and 419a(b) (Oct. 29, 1919, ch. 89, § 2(b), 41 Stat. 325; June 22, 1932, ch. 271, § 2, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 782; May 22, 1934, ch. 333, § 2(a), 48 Stat. 794; Aug. 18, 1941, ch. 366, § 2(b), 55 Stat. 631).

This section consolidates into one section identical definitions contained in sections 408, 408b, 414(a), and 419a(b) of title 18, U.S.C., 1940 ed.

In addition to slight improvements in style, the word "commerce" was substituted for "transportation" in order to avoid the narrower connotation of the word "transportation" since "commerce" obviously includes more than "transportation." The word "Possession" was inserted in two places to make the definition more accurate and comprehensive since the places included in the word "Possession" would normally be within the term defined and a narrower construction should be handled by express statutory exclusion in those crimes which Congress intends to restrict to commerce within the continental United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 16 section 852.

§ 11. Foreign government defined

The term "foreign government", as used in this title except in sections 112, 878, 970, 1116, and 1201, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

(June 25, 1948, ch. 645, 62 Stat. 686; Oct. 8, 1976, Pub. L. 94-467, § 11, 90 Stat. 2001.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 98, 288, 349; section 235 of title 22 U.S.C., 1940 ed., Foreign Relations and Intercourse; section 41 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226).

The definition of "foreign government" contained in this section, with minor changes in phraseology, is from section 4 of title VIII of act June 15, 1917 (Ch. 30, 40 Stat. 217, 226), known as the Espionage Act of 1917. This definition was incorporated in sections 98, 288, and 349 of title 18 and in section 235 of title 22, Foreign Relations and Intercourse, and in section 41 of Title 50, War and National Defense, U.S.C., all in 1940 ed., since the definition was specifically enacted with reference to said sections and others not material here.

The remaining provisions of said sections 98 and 349 of title 18, U.S.C., 1940 ed., which were derived from sources other than said section 4 of title VIII of the act of June 15, 1917, are incorporated in sections 502 and 957 of this title.

AMENDMENTS

1976—Pub. L. 94-467 inserted "except in sections 112, 878, 970, 1116, and 1201" following "title".

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Extradition, certification of amounts to be paid by foreign government on account of fees and costs, see section 3195 of this title.

Foreign relations generally, see section 951 et seq. of this title.

Transportation, sale or receipt of stolen securities, application to obligations of foreign government, see sections 2314, 2315 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Foreign relations, etc., grounds for issuance of search warrant, see rule 41, Appendix to this title.

Subpoena, circumstances and manner of service abroad, see rule 17.

Witnesses in foreign country, nonapplicability of rules to proceedings against witness, see rule 54.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 12. United States Postal Service defined

As used in this title, the term "Postal Service" means the United States Postal Service established under title 39, and every officer and employee of that Service, whether[1] he has taken the oath of office.

(June 25, 1948, ch. 645, 62 Stat. 686; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(2), 84 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 301, 360 (Mar. 4, 1909, ch. 321, §§ 230, 231, 35 Stat. 1134).

This section consolidates sections 301 and 360 of title 18, U.S.C., 1940 ed., with necessary changes in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 inserted "United States" preceding "Postal Service" in the catchline and substituted in the text as definition of "Postal Service" the United States Postal Service established under title 39, and every officer and employee of that Service, whether he has taken the oath of office, for prior definition which included the Post Office Department and every employee, thereof, whether or not he has taken the oath of office.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

United States Postal Service, see Title 39, Postal Service.

§ 13. Laws of States adopted for areas within Federal jurisdiction

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(June 25, 1948, ch. 645, 62 Stat. 686.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 468 (Mar. 4, 1909, ch. 321, § 289, 35 Stat. 1145; June 15, 1933, ch. 85, 48 Stat. 152; June 20, 1935, ch. 284, 49 Stat. 394; June 6, 1940, ch. 241, 54 Stat. 234).

Act March 4, 1909, § 289 used the words "now in force" when referring to the laws of any State, organized Territory or district, to be considered in force.

As amended on June 15, 1933, the words "by the laws thereof in force on June 1, 1933, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal," were used.

The amendment of June 20, 1935, extended the date to "April 1, 1935," and the amendment of June 6, 1940, extended the date to "February 1, 1940".

The revised section omits the specification of any date as unnecessary in a revision, which speaks from the date of its enactment. Such omission will not only make effective within Federal reservations, the local State laws in force on the date of the enactment of the revision, but will authorize the Federal courts to apply the same measuring stick to such offenses as is applied in the adjoining State under future changes of the State law and will make unnecessary periodic pro forma amendments of this section to keep abreast of changes of local laws. In other words, the revised section makes applicable to offenses committed on such reservations, the law of the place that would govern if the reservation had not been ceded to the United States.

The word "Possession" was inserted to clarify scope of section.

Minor changes were made in phraseology.

§ 14. Applicability to Canal Zone; definition

(a) In addition to the sections of this title which by their terms apply to and within the Canal Zone, the following sections of this title, as amended from time to time, apply to and within the Canal Zone: 6, 8, 11, 45, 201, 202, 203, 205, 207, 208, 209, 210, 211, 218, 287, 331, 371, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 505, 506, 507, 508, 509, 594, 595, 598, 600, 601, 604, 605, 608, 611, 612, 703, 752, 755, 756, 792, 793, 794, 795, 796, 797, 798, as added by section 24(a) of the Act of October 31, 1951 (chapter 655, 65 Stat. 719), 798, as added by section 4 of the Act of June 30, 1953 (chapter 175, 67 Stat. 133), 799, 915, 917, 951, 953, 954, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 1001, 1017, 1024, 1073, 1301, 1364, 1381, 1382, 1542, 1543, 1544, 1546, 1584, 1621, 1622, 1761, 1821, 1991, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2199, 2231, 2234, 2235, 2274, 2275, 2277, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, 2421, 2422, 2423, 2424, 3042, 3059, 3105, 3109, 3187, 3195, 3500.

(b) The term "Canal Zone", as used in the sections of this title which by their terms apply to and within the Canal Zone, and as used in subsection (a) of this section, includes the area designated as the Canal Zone by sections 1 and 2 of Title 2, Canal Zone Code; and it also includes the corridor over which the United States of America exercises jurisdiction pursuant to the provisions of Article IX of the General Treaty of Friendship and Cooperation be-

[1] So in original. Probably should be "whether or not".

tween the United States of America and the Republic of Panama, signed March 2, 1936, to the extent that the application, to the corridor, of the sections mentioned in this subsection, and of those specified in subsection (a) of this section, is consistent with the nature of the rights of the United States in the corridor as provided by treaty.

(c) The definitions of the terms prescribed by sections 5 and 10, or other sections of this title, are modified to effectuate the applicability of the sections enumerated by subsection (a) of this section to and within the Canal Zone.

(June 25, 1948, ch. 645, 62 Stat. 686; Aug. 5, 1953, ch. 325, 67 Stat. 366; Oct. 18, 1962, Pub. L. 87-845, § 3(a), 76A Stat. 698; June 22, 1968, Pub. L. 90-357, § 59, 82 Stat. 248.)

SENATE REVISION AMENDMENT

This amendment, adding a new section 14, together with amended section 5 will clarify the applicability of Federal criminal statutes within the Canal Zone. It was particularly desired by the Governor of the Canal Zone and the compiler of the Canal Zone Code. The Governor of the Canal Zone, in a letter dated September 22, 1945, and filed with the House Judiciary Committee, advised:

"General criminal laws of the United States are now applicable to the Canal Zone only if applicability is indicated by language expressly referring to the Canal Zone, or to possessions of the United States, or to territory subject to the jurisdiction of the United States, etc. * * * The bill in its present form would have undesirable effects insofar as concerns the continued operation of the Canal Zone Criminal Code and Code of Criminal Procedure, established by Congress as titles 5 and 6 of the Canal Zone Code, enacted by act of June 19, 1934 (ch. 667, 48 Stat. 1122), and also would perhaps have undesirable effects insofar as concerns the continued applicability to the Canal Zone of the body of general criminal laws which are now applicable."

REFERENCES IN TEXT

Among the sections of this title, referred to in the text of this section, as being by their terms applicable to and within the Canal Zone are: section 1261 making Liquor Traffic provisions of sections 1261 to 1265 inapplicable to Canal Zone; section 3183, relating to extradition of fugitives from state, territory or possession into Canal Zone: sections 3241 relating to jurisdiction of offenses under certain sections: sections 3771 and 3772, relating to power of Supreme Court to prescribe rules of procedure in a criminal case to and including the verdict and after the verdict.

Section 608 of this title, referred to in subsec. (a), was repealed by Pub. L. 94-283, title II, § 201(a), May 11, 1976, 90 Stat. 496.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-357 inserted ", as amended from time to time," following "title" and preceding "apply", included references in sections 203, 205, 207, 208, 209, 210, 211, and 218, and eliminated reference to section 1914.

1962—Pub. L. 87-845 inserted "; definition" in the catchline, designated existing provisions of section as subsec. (a) and included therein references to sections 45, 201, 202, 287, 471, 473, 475, 476, 477, 484, 486, 487, 490 to 498, 505, 507 to 509, 752, 755, 798 as added by act of Oct. 31, 1951, 798 as added by act of June 30, 1953, 799, 1001, 1024, 1381, 1991, 2157, 2381 to 2383, 2387, 3042, 3187 and 3195, eliminated therefrom references to sections 502, 791 and 1362, and added subsecs. (b) and (c).

1953—Act Aug. 5, 1953, inserted "1362" after "1301".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 25 of Pub. L. 87-845 provided in part that section 4210 of this title and section 858 of Title 50, War and National Defense, and the amendments of this section, section 1934 of Title 22, Foreign Relations and Intercourse, section 196 of Title 24, Hospitals, Asylums, and Cemeteries, sections 414, 547, 1404 and 1406 of Title 28, Judiciary and Judicial Procedure, and sections 191a and 191b of title 50, shall take effect Jan. 2, 1963.

CROSS REFERENCES

Extradition of fugitives from Canal Zone into extraterritorial jurisdiction of United States, see section 3183 of this title.

Jurisdiction of certain offenses by District Court for Canal Zone, see section 3241 of this title.

Liquor traffic provisions inapplicable to Canal Zone, see section 1261 of this title.

Power of Supreme Court to prescribe rules of procedure for criminal cases in District Court for Canal Zone, see sections 3771 and 3772 of this title.

Term United States as not including Canal Zone, see section 5 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Applicability of rules, see rule 54, Appendix to this title.

§ 15. Obligation or other security of foreign government defined

The term "obligation or other security of any foreign government" includes, but is not limited to, uncanceled stamps, whether or not demonetized.

(Added Pub. L. 85-921, § 3, Sept. 2, 1958, 72 Stat. 1771.)

CHAPTER 2—AIRCRAFT AND MOTOR VEHICLES

Sec.
31. Definitions.
32. Destruction of aircraft or aircraft facilities.
33. Destruction of motor vehicles or motor vehicle facilities.
34. Penalty when death results.
35. Imparting or conveying false information.

§ 31. Definitions

When used in this chapter the term—

"Aircraft engine", "air navigation facility", "appliance", "civil aircraft", "foreign air commerce", "interstate air commerce", "landing area", "overseas air commerce", "propeller", and "spare part" shall have the meaning ascribed to those terms in the Civil Aeronautics Act of 1938, as amended.

"Motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property;

"Destructive substance" means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature; and

"Used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 538.)

REFERENCES IN TEXT

The Civil Aeronautics Act of 1938, as amended, referred to in text, is act June 23, 1938, ch. 601, 52 Stat. 973, which was classified to section 401 et seq. of Title 49, Transportation. Said Act was repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, and is now covered by section 1301 et seq. of title 49.

§ 32. Destruction of aircraft or aircraft facilities

Whoever willfully sets fire to, damages, destroys, disables, or wrecks any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce; or

Whoever willfully sets fire to, damages, destroys, disables, or wrecks any aircraft engine, propeller, appliance, or spare part with intent to damage, destroy, disable, or wreck any such aircraft; or

Whoever, with like intent, willfully places or causes to be placed any destructive substance in, upon, or in proximity to any such aircraft, or any aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material used or intended to be used in connection with the operation of any such aircraft, or any cargo carried or intended to be carried on any such aircraft, or otherwise makes or causes to be made any such aircraft, aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material unworkable or unusable or hazardous to work or use; or

Whoever, with like intent, willfully sets fire to, damages, destroys, disables, or wrecks, or places or causes to be placed any destructive substance in, upon, or in proximity to any shop, supply, structure, station, depot, terminal, hanger, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus used or intended to be used in connection with the operation, loading, or unloading of any such aircraft or making any such aircraft ready for flight, or otherwise makes or causes to be made any such shop, supply, structure, station, depot, terminal, hangar, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus unworkable or unusable or hazardous to work or use; or

Whoever, with like intent, willfully incapacitates any member of the crew of any such aircraft; or

Whoever willfully attempts to do any of the aforesaid acts or things—

shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 539.)

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

§ 33. Destruction of motor vehicles or motor vehicle facilities

Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or

Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such; or

Whoever willfully attempts to do any of the aforesaid acts—

shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540.)

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

§ 34. Penalty when death results

Whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 844 of this title.

§ 35. Imparting or conveying false information

(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States.

(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title—shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540, and amended Oct. 3, 1961, Pub. L. 87-338, 75

Stat. 751; July 7, 1965, Pub. L. 89-64, 79 Stat. 210.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-64 substituted "subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States" for "fined not more than $1,000, or imprisoned not more than one year, or both".

1961—Subsec. (a). Pub. L. 87-338 designated existing provisions of section as subsec. (a) and eliminated therefrom the word "willfully" which preceded "imparts or conveys".

Subsec. (b). Pub. L. 87-338 added subsec. (b).

CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

Sec.
41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges.
42. Importation of injurious animals and birds; permits; specimens for museums.[1]
43. Transportation or importation in violation of state, national, or foreign laws.[1]
44. Marking packages or containers.
45. Capturing or killing carrier pigeons.
46. Transportation of water hyacinths.
47.[2] Use of aircraft or motor vehicles to hunt certain wild horses or burros.

HISTORICAL AND REVISION NOTES

The criminal provisions of the Migratory Bird Treaty Act, sections 703-711 of title 16, U.S.C., 1940 ed., Conservation, and the Migratory Bird Conservation Act, sections 715-715r of title 16, U.S.C., 1940 ed., Conservation, were considered for inclusion in this chapter. Since these provisions, except parts of sections 704-707 of said title 16, are so inextricably interwoven with the Migratory Bird Acts, it was found advisable to exclude them.

AMENDMENTS

1959—Pub. L. 86-234, § 1(b), Sept. 8, 1959, 73 Stat. 470, added item 47.

1956—Act Aug. 1, 1956, ch. 825, § 2(b), 70 Stat. 798, substituted the heading "Chapter 3.—Animals, Birds, Fish, and Plants" for "Chapter 3.—Animals, Birds, and Fish" and added item 46.

§ 41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges

Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, willfully disturbs or kills any bird, fish, or wild animal of any kind whatever, or takes or destroys the eggs or nest of any such bird or fish, on any lands or waters which are set apart or reserved as sanctuaries, refuges or breeding grounds for such birds, fish, or animals under any law of the United States or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 686.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 145 and §§ 676, 682, 683, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., Conservation (Jan. 24, 1905, ch. 137, § 2, 33 Stat. 614; June 29, 1906, ch. 3593, § 2, 34 Stat. 607; Mar. 4, 1909, ch. 321, § 84, 35 Stat. 1104; Aug. 11, 1916, ch. 313, 39 Stat. 476; June 5, 1920, ch. 247, § 2, 41 Stat. 986; Apr. 15, 1924, ch. 108, 43 Stat. 98; Feb. 28, 1925, ch. 376, 43 Stat. 1091; July 3, 1926, ch. 744, § 6, 44 Stat. 821; July 3, 1926, ch. 776, § 3, 44 Stat. 889; June 28, 1930, ch. 709, § 2, 46 Stat. 828; Mar. 10, 1934, ch. 54, § 2, 48 Stat. 400; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This revised section condenses, consolidates, and simplifies similar provisions of sections 676, 682, 683, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., with section 145 of title 18, U.S.C., 1940 ed., with such changes of phraseology as make clear the intent of Congress to protect all wildlife within Federal sanctuaries, refuges, fish hatcheries, and breeding grounds. Irrelevant provisions of such sections in title 16 are to be retained in that title.

Because of the general nature of this consolidated section, no specific reference is made to rules and regulations issued by the Secretary of the Interior or any other personage, but only to rules and regulations "promulgated by authority of law".

The punishment provided by the sections consolidated varied from a fine not exceeding $100 or imprisonment not exceeding 6 months, or both, in section 694a of title 16, U.S.C., 1940 ed., to a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both, in sections 676, 685, and 688 of such title 16. The revised section adopts the punishment provisions of the other five sections.

The references to "misdemeanor" in sections 676, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., were omitted as unnecessary in view of definition of "misdemeanor" in section 1 of this title, and also to conform with policy followed by codifiers of the 1909 Criminal Code, as stated in Senate Report 10, part 1, pages 12, 13, 14, Sixtieth Congress, first session, to accompany S. 2982.

Words "upon conviction", contained in sections 676, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., were omitted as surplusage, because punishment can be imposed only after conviction.

Words "in any United States court of competent jurisdiction", in sections 676, 685, and 688 of title 16, U.S.C., 1940 ed., words "in any United States court", in sections 689b, 692a, and 694a of such title 16, and words "in the discretion of the court", in said sections 676, 685, 688, and 689b, were likewise omitted as surplusage.

CROSS REFERENCES

Game and bird preserves, see section 671 et seq. of Title 16, Conservation.

Protection of migratory game and birds, see section 701 et seq. of Title 16.

§ 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called "flying foxes" or fruit bats of the genus Pteropus; and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wild-

[1] Catchline amended by Pub. L. 86-702, Sept. 2, 1960, 74 Stat. 754, without amending analysis.

[2] So in original. Does not conform to section catchline.

life resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea) amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.

(2) As used in this subsection, the term "wild" relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms "wildlife" and "wildlife resources" include those resources that comprise wild mammals, wild birds, fish (including mollusks and crustacea), and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent.

(3) Notwithstanding the foregoing, the Secretary of the Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest and health, shall permit the importation for zoological, educational, medical, and scientific purposes of any mammals, birds, fish, (including mollusks and crustacea), amphibia, and reptiles, or the offspring or eggs thereof, where such importation would be prohibited otherwise by or pursuant to this Act, and this Act shall not restrict importations by Federal agencies for their own use.

(4) Nothing in this subsection shall restrict the importation of dead natural-history specimens for museums or for scientific collections, or the importation of domesticated canaries, parrots (including all other species of psittacine birds), or such other cage birds as the Secretary of the Interior may designate.

(5) The Secretary of the Treasury and the Secretary of the Interior shall enforce the provisions of this subsection, including any regulations issued hereunder, and, if requested by the Secretary of the Interior, the Secretary of the Treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions.

(b) Whoever violates this section, or any regulation issued pursuant thereto, shall be fined not more than $500 or imprisoned not more than six months, or both.

(c) The Secretary of the Treasury shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits—

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

(June 25, 1948, ch. 645, 62 Stat. 687; May 24, 1949, ch. 139, § 2, 63 Stat. 89; Sept. 2, 1960, Pub. L. 86-702, § 1, 74 Stat. 753.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 391, 394 (Mar. 4, 1909, ch. 321, §§ 241, 244, 35 Stat. 1137, 1138; June 15, 1935, ch. 261, title II, § 201, 49 Stat. 381; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This section consolidates the provisions of sections 391 and 394 of title 18, U.S.C., 1940 ed., as subsections (a) and (b), respectively.

In subsection (a) the words "Territory or District thereof" were omitted as unnecessary in view of the definition of the United States in section 5 of this title.

In subsection (b) the words "upon conviction thereof", were omitted as surplusage because punishment can only be imposed after conviction.

The amount of the fine was reduced from $1,000 to $500, thus making the violation a petty offense as defined in section 1 of this title. (See also section 41 of this title which provides a similar punishment.)

Minor verbal changes were also made.

1949 ACT

This section [section 2] incorporates in section 42 of title 18, U.S.C., with slight changes in phraseology, the provisions of act of June 29, 1948 (ch. 716, 62 Stat. 1096), which became law subsequent to the enactment of the revision of title 18.

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables volume.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Foods and Drugs. For complete classification of this Act to the Code, see Tables volume.

The Federal Plant Pest Act, referred to in subsec. (a)(1), is Pub. L. 85-36, title I, May 23, 1957, 71 Stat. 31, which is classified generally to chapter 7B (§ 150aa et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 150aa of Title 7 and Tables volume.

This Act, referred to in subsec. (a)(3), probably refers to Pub. L. 86-702, which amended this section and section 43 of this title.

AMENDMENTS

1960—Pub. L. 86-702 substituted "Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia and reptiles; permits; specimens for museums; regulations" for "Importation of injurious animals and birds; permits; specimens for museums" in the catchline.

Subsec. (a)(1). Pub. L. 86-702 designated first sentence of former subsec. (a) as subsec. (a)(1), prohibited

importation into the Commonwealth of Puerto Rico or any possession of the United States and shipments between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, described the mongoose and flying foxes by their scientific names, extended the provisions prohibiting importation or shipment to include wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or their eggs or offspring, empowered the Secretary to prohibit importation or shipment if injurious to human beings, forestry, or to wildlife or wildlife resources, required prompt exportation or destruction at the expense of the importer or consignee, provided that this section shall not be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act and that it shall not authorize any action with respect to the importation of plant pests, and deleted provisions which required destruction of prohibited birds and animals or their return at the expense of the owner, and which prohibited the importation of the English sparrow and the starling.

Subsecs. (a)(2), (3). Pub. L. 86-702 added subsecs. (a)(2) and (a)(3).

Subsec. (a)(4). Pub. L. 86-702 designated second sentence of former subsec. (a) as subsec. (a)(4), limited importation of natural-history specimens to dead ones, and included all species of psittacine birds.

Subsec. (a)(5). Pub. L. 86-702 designated third sentence of former subsec. (a) as subsec. (a)(5), authorized enforcement by the Secretary of the Interior, and permitted the Secretary of the Treasury, if requested by the Secretary of the Interior, to require the furnishing of a bond.

Subsec. (b). Pub. L. 86-702 included violations of regulations.

1949—Subsec. (a). Act May 24, 1949, made section applicable to any Territory or district thereof as well as to the United States, and changed the phraseology.

Subsec. (b). Act May 24, 1949, reenacted subsec. (b) without change.

Subsec. (c). Act May 24, 1949, added subsec. (c).

CROSS REFERENCES

Preservation of game and wild birds; duties and powers of Secretary of the Interior; regulations as to hunting, see section 701 et seq. of Title 16, Conservation.

Unlawful transportation or importation of migratory birds, see sections 705 and 707 of Title 16.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3054, 3112 of this title; title 19 section 1527.

§ 43. Transportation of wildlife taken in violation of State, National, or foreign laws; receipt; making false records

(a) Any person who—

(1) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country; or

(b) Any person who—

(1) sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

(3) having purchased or received wildlife imported from any foreign country or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

(4) receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

(A) taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered, carried, transported, or shipped by any means or method in interstate or foreign commerce, or

(B) taken, transported, or sold in violation of any Act of Congress or regulation issued thereunder, or

(5) imports from Mexico to any State, or exports from any State to Mexico, any game mammal, dead or alive, or part or product thereof, except under permit or other authorization of the Secretary or, in accordance with any regulations prescribed by him, having due regard to the requirements of the Migratory Birds and Game Mammals Treaty with Mexico and the laws of the United States forbidding importation of certain live mammals injurious to agriculture and horticulture;

shall be subject to the penalties prescribed in subsections (c) and (d) of this section.

(c)(1) Any person who knowingly violates, or who, in the exercise of due care, should know that he is violating, any provision of subsection (a) or (b) of this section may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(2) Any employee authorized by the Secretary to enforce the provisions of this section, or any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in violation of this section with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection.

Such wildlife, product, property, or item so seized shall be held by such employee pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such wildlife, product, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of this section, such wildlife, product, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any wildlife, product, property, or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such wildlife, product, property, or item so seized, no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such wildlife, product, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such wildlife, product, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(d) Any person who knowingly and willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(e) Any wildlife or products thereof seized in connection with any knowing and willful violation of this section with respect to which a penalty may be imposed pursuant to subsection (d) shall, upon conviction of such violation, be forfeited to the Secretary to be disposed of by him in such manner as he deems appropriate. Any other property or item so seized may upon conviction, in the discretion of the court, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such wildlife, product, property, or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (c) of this section.

(f) For the purpose of this section, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "person" means any individual, firm, corporation, association, or partnership;

(3) "wildlife" means any wild mammal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, egg, or offspring thereof, or the dead body or parts thereof, but does not include migratory birds for which protection is afforded under the Migratory Bird Treaty Act, as amended;

(4) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

(5) "taken" means captured, killed, collected, or otherwise possessed.

(June 25, 1948, ch. 645, 62 Stat. 687; Sept. 2, 1960, Pub. L. 86-702, § 2, 74 Stat. 754; Dec. 5, 1969, Pub. L. 91-135, § 7(a), 83 Stat. 279.)

HISTORICAL AND REVISION NOTES

Based on sections 704-707 of title 16 and sections 392, 393a, and 394 of title 18, U.S.C., 1940 ed. (Mar. 4, 1909, ch. 321, §§ 242, 244, 35 Stat. 1137, 1138; July 3, 1918, ch. 128, §§ 3-6, 40 Stat. 755, 756; June 15, 1935, ch. 261, title II, §§ 201, 202, 49 Stat. 380, 381; June 20, 1936, ch. 634, §§ 2, 4, 49 Stat. 1556; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This section consolidates sections 392, 393a part, and 394 of said title 18 with parts of sections 704-707 of said title 16.

Other provisions of said section 393a of title 18, U.S.C., 1940 ed., are incorporated in sections 44, 3055 and 3112 of this title. Provisions of said section 706 of title 16, U.S.C., 1940 ed., not incorporated here, are covered either by section 3055 of this title, relating to arrests and warrants, or by the Federal Rules of Criminal Procedure, relating to warrants, searches and seizures, arraignment, etc.

The words "interstate or foreign commerce" were substituted for the enumeration of geographical subdivisions of the United States and foreign countries, in view of the definition of interstate or foreign commerce in section 10 of this title. The word "Possession" was inserted following the words "State, Territory" to clarify scope of section and avoid ambiguity as to the meaning of the term "United States."

The punishment provision of section 707 of title 16, U.S.C., 1940 ed., Conservation was adopted instead of the phrase "not more than $1,000" contained in section 394 of title 18, U.S.C., 1940 ed., thus making the violation a petty offense of the same grade as violations of sections 41 and 42 of this title.

The words "upon conviction thereof" were omitted as surplusage because punishment can be imposed only after conviction.

Other changes were made in phraseology to effect the consolidation.

REFERENCES IN TEXT

The Migratory Bird Treaty Act, referred to in subsec. (f)(3), is act July 3, 1918, ch. 128, 40 Stat. 755, which is classified generally to subchapter II (§ 703 et seq.) of chapter 7 of Title 16, Conservation. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1969—Pub. L. 91-135, in rewriting existing provisions to clarify the nature of the violations, to refer to commercial and noncommercial purposes and interstate or foreign commerce, and to adopt the form descriptive of violations of acts of Congress and of laws of States or foreign countries, substituted subsecs. (a) to (f) for five prior pars.:

Subsec. (a) incorporating provisions of former first par., amended to include commission of offense as a principal;

Subsec. (b)(1) and (2) constituting new provisions based on provisions of former first par., drafted in language of subsec. (a);

Subsec. (b)(3) incorporating provisions of former third par., substituting "purchased or received" for "acquired";

Subsec. (b)(4)(A) and (B) incorporating provisions of former first and second pars.;

Subsec. (b)(5) incorporating provisions of former fourth par., amended to have due regard for requirements of the Migratory Birds and Game Mammals Treaty with Mexico and Federal laws forbidding importation of certain live mammals injurious to agriculture and horticulture, and to omit need for approval of regulations by the President;

Subsec. (c) constituting new provisions for administrative assessment of a maximum civil penalty of $5,000 for each violation, where the person knowingly violates or should know that he is committing a violation: separate offenses, notice and hearing, compromises; civil actions: jurisdiction and venue, trial de novo; execution of search and seizure warrants; custody of articles pending disposition of proceedings; posting bond or other surety; forfeitures: notification of seizure, expeditious disposition of civil penalty proceedings, and return of property to owners; former provisions of fifth par. providing in part only for a criminal penalty by way of $500 fine or six months imprisonment or both;

Subsec. (d) substituting criminal penalty of $10,000 fine or one year imprisonment or both for prior provisions of fifth par. for a $500 fine or six months imprisonment or both;

Subsec. (e) incorporating the provisions of former fifth par. for forfeiture of wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, amended to include forfeitures for criminal violations, notification of seizure, and return of property to owner;

Subsec. (f) incorporating the substance of existing provisions in pars. (3) to (5); extending coverage in par. (3) beyond wild animals and wild life to include any amphibian, reptile, mollusk, or crustacean, or any part, egg, or offspring thereof, or the dead body or parts thereof, but to exclude migratory birds protected by the Migratory Bird Treaty, as amended; excluding in par. (4) reference to "territory" and substituting "American Samoa, the Virgin Islands, and Guam" for "possession of the United States"; and using in par. (5) the generic "taken" for previously synonymous terms "captured, killed, collected, or otherwise possessed".

1960—Pub. L. 86-702 substituted "Transportation of wildlife taken in violation of State, National, or foreign laws; receipt; making false records" for "Transportation or importation in violation of State, National, or foreign laws" in the catchline, and in the text included shipping by any means, enumerated the forbidden areas as any State, territory, the District of Columbia, Puerto Rico, possessions, or foreign countries, specified mammals or birds of any kind, and their offspring, extended the prohibitions to those imposed by regulations issued pursuant to federal or state law, further included those who receive, acquire, or purchase, knowingly, such prohibited objects, and forbade false labeling or identification of such objects.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-135 effective 180 days after Dec. 5, 1969, see section 11 of Pub. L. 91-135, set out as a note under section 705 of Title 16, Conservation.

CROSS REFERENCES

Arrests, see section 3054 of this title, and section 706 of Title 16, Conservation.

Preservation of game and wild birds; duties and powers of Secretary of the Interior; regulations as to hunting, see section 701 et seq. of Title 16.

Search warrants and seizures, see section 3112 of this title, and section 706 of Title 16.

Unlawful transportation or importation of migratory birds, see sections 705 and 707 of Title 16.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3054, 3112 of this title.

§ 44. Marking packages or containers

Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing any wild mammal, wild bird, amphibian, or reptile, or any mollusk or crustacean, or the dead body or parts or eggs thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging such package as prescribed in such convention, or Act of Congress, or regulation thereunder; or

Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

Shall be fined not more than $500 or imprisoned not more than six months, or both; and the shipment shall be forfeited.

In any case where the marking, labeling, or tagging of a package under this section indicating in any way the contents thereof would create a significant possibility of theft of the package or its contents, the Secretary of the Interior may, upon request of the owner thereof or his agent or by regulation, provide some other reasonable means of notifying appropriate authorities of the contents of such packages.

(June 25, 1948, ch. 645, 62 Stat. 687; Dec. 5, 1969, Pub. L. 91-135, § 8, 83 Stat. 281.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 393, 393a, 394 (Mar. 4, 1909, ch. 321, §§ 243, 244, 35 Stat. 1137, 1138; June 15, 1935, ch. 261, title II, §§ 201, 202, 49 Stat. 381; June 19, 1939, ch. 209, 53 Stat. 840; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This section consolidates sections 393, 393a, and 394 of title 18, U.S.C., 1940 ed.

The words "interstate or foreign commerce" were substituted for the enumeration of geographical subdivisions of the United States and foreign countries, in view of the definition of interstate or foreign commerce in section 10 of this title. Other provisions of said section 393a of title 18, U.S.C., 1940 ed., are incorporated in sections 43, 3055 and 3112 of this title.

The words "upon conviction thereof" were omitted as surplusage because punishment can be imposed only after conviction.

The punishment provision was modified by reducing the fine of $1,000 to $500 to conform to other sections of this chapter. (See sections 41, 42, and 43 of this title.)

Other changes were made in phraseology to effect the consolidation.

AMENDMENTS

1969—Pub. L. 91-135 extended the protection of the first par., substituting "any wild mammal, wild bird, amphibian, or reptile, or any mollusk or crustacean, or the dead body or parts or eggs thereof" for "wild ani-

mals or birds, or the dead bodies or parts thereof," and authorized the Secretary to provide some other reasonable means for persons to notify the appropriate authorities of the contents of packages when it appears that marking, labeling, or tagging of such packages would create a significant possibility of theft of the packages or its contents, respectively.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-135 effective 180 days after Dec. 5, 1969, see section 11 of Pub. L. 91-135, set out as a note under section 705 of Title 16, Conservation.

CROSS REFERENCES

Arrests, see section 3054 of this title, and section 706 of Title 16, Conservation.

Preservation of game and wild birds; duties and powers of Secretary of the Interior; regulations as to hunting, see section 701 et seq. of Title 16.

Search warrants and seizures, see section 3112 of this title, and section 706 of Title 16.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3054, 3112 of this title.

§ 45. Capturing or killing carrier pigeons

Whoever knowingly traps, captures, shoots, kills, possesses, or detains an Antwerp or homing pigeon, commonly called carrier pigeon, owned by the United States or bearing a band owned and issued by the United States having thereon the letters "U.S.A." or "U.S.N." and a serial number, shall be fined not more than $100 or imprisoned not more than six months, or both.

The possession or detention of any such pigeon without giving immediate notice by registered mail to the nearest military or naval authorities, shall be prima facie evidence of a violation of this section.

(June 25, 1948, ch. 645, 62 Stat. 688.)

HISTORICAL AND REVISION NOTES

Based on sections 111, 112, and 113 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 19, 1918, ch. 58, §§ 1, 2, 3, 40 Stat. 533).

Section consolidates sections 111, 112, and 113 of title 50, U.S.C., 1940 ed., War and National Defense.

Words "upon conviction" were deleted as surplusage because punishment can only be imposed after conviction.

Other changes in phraseology also were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 46. Transportation of water hyacinths

(a) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, alligator grass (alternanthera philoxeroides), or water chestnut plants (trapa natans) or water hyacinth plants (eichhornia crassipes) or the seeds of such grass or plants; or

(b) Whoever knowingly sells, purchases, barters, exchanges, gives, or receives any grass, plant, or seed which has been transported in violation of subsection (a); or

(c) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, an advertisement, to sell, purchase, barter, exchange, give, or receive alligator grass or water chestnut plants or water hyacinth plants or the seeds of such grass or plants—

shall be fined not more than $500, or imprisoned not more than six months, or both.

(Added Aug. 1, 1956, ch. 825, § 1, 70 Stat. 797.)

§ 47. Use of aircraft or motor vehicles to hunt certain wild horses or burros; pollution of watering holes

(a) Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be fined not more than $500, or imprisoned not more than six months, or both.

(b) Whoever pollutes or causes the pollution of any watering hole on any of the public land or ranges for the purpose of trapping, killing, wounding, or maiming any of the animals referred to in subsection (a) of this section shall be fined not more than $500, or imprisoned not more than six months, or both.

(c) As used in subsection (a) of this section—

(1) The term "aircraft" means any contrivance used for flight in the air; and

(2) The term "motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land.

(Added Pub. L. 86-234, § 1(a), Sept. 8, 1959, 73 Stat. 470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1338a.

CHAPTER 5—ARSON

Sec.

81. Arson within special maritime and territorial jurisdiction.

§ 81. Arson within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns, or attempts to set fire to or burn any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

If the building be a dwelling or if the life of any person be placed in jeopardy, he shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 688.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 464, 465 (Mar. 4, 1909, ch. 321, §§ 285, 286, 35 Stat. 1144).

Sections were consolidated and rewritten both as to form and substance and that part of each section relating to destruction of property by means other than burning constitutes section 1363 of this title.

The words "within the maritime and territorial jurisdiction of the United States" were added to preserve

existing limitations of territorial applicability. (See section 7 of this title and note thereunder.)

The phrase "any building, structure, or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping" was substituted for "any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house", in section 464 of title 18, U.S.C., 1940 ed., and "any arsenal, armory, magazine, rope walk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel, built, building, or undergoing repair, or any lighthouse, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval or victualing stores, arms, or other munitions of war", in section 465 of title 18, U.S.C., 1940 ed. The substituted phrase is a concise and comprehensive description of the things enumerated in both sections.

The punishment provisions are new and are graduated with some regard to the gravity of the offense. It was felt that a possible punishment of 20 years for burning a wood pile or injuring or destroying an outbuilding was disproportionate and not in harmony with recent legislation.

CROSS REFERENCES

Setting fire to railroad tunnels, bridges, etc., see section 1992 of this title.

Special maritime and territorial jurisdiction of the United States defined, see section 7 of this title.

Vessel of foreign or United States registry, see section 2275 of this title.

CHAPTER 7—ASSAULT

Sec.
111. Assaulting, resisting, or impeding certain officers or employees.
112. Protection of foreign officials, official guests, and internationally protected persons.
113. Assaults within maritime and territorial jurisdiction.
114. Maiming within maritime and territorial jurisdiction.

AMENDMENTS

1976—Pub. L. 94-467, § 6, Oct. 8, 1976, 90 Stat. 2000, substituted "official guests, and internationally protected persons" for "and official guests" in item 112.

1972—Pub. L. 92-539, title III, § 302, Oct. 24, 1972, 86 Stat. 1073, substituted "Protection of foreign officials and official guests" for "Assaulting certain foreign diplomatic and other official personnel" in item 112.

1964—Pub. L. 88-493, § 2, Aug. 27, 1964, 78 Stat. 610, substituted "certain foreign diplomatic and other official personnel" for "public minister" in item 112.

§ 111. Assaulting, resisting, or impeding certain officers or employees

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 688.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 118, 254 (Mar. 4, 1909, ch. 321, § 62, 35 Stat. 1100; May 18, 1934, ch. 299, § 2, 48 Stat. 781).

This section consolidates sections 118 and 254 with changes in phraseology and substance necessary to effect the consolidation.

Also the words "Bureau of Animal Industry of the Department of Agriculture" appearing in section 118 of title 18, U.S.C., 1940 ed., were inserted in enumeration of Federal officers and employees in section 1114 of this title.

The punishment provision of section 254 of title 18, U.S.C., 1940 ed., was adopted as the latest expression of Congressional intent. This consolidation eliminates a serious incongruity in punishment and application.

CROSS REFERENCES

Bank robbery, assault in committing, see section 2113 of this title.

Indians—

Assault by Indian in Indian country, see section 1153 of this title.

Jurisdiction of offenses by Indians in Indian country, see section 3242 of this title.

Mail clerk or custodian, assault on, see section 2114 and 2116 of this title.

Persons authorized to serve or execute warrants or to make searches and seizures, assault on, see section 2231 of this title.

Piracy, assault on commander as, see section 1655 of this title.

Process server, assault on, see section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 84, 87c; title 22 section 2667; title 42 section 2000e-13.

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) Whoever willfully—

(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

(3) within the United States but outside the District of Columbia and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or
(D) an official guest;

congregates with two or more other persons with intent to violate any other provision of this section;

shall be fined not more than $500 or imprisoned not more than six months, or both.

(c) For the purpose of this section "foreign government", "foreign official", "internationally protected person", "international organization", and "official guest" shall have the same meanings as those provided in section 1116(b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.

(June 25, 1948, ch. 645, 62 Stat. 688; Aug. 27, 1964, Pub. L. 88-493, § 1, 78 Stat. 610; Oct. 24, 1972, Pub. L. 92-539, title III, § 301, 86 Stat. 1072; Oct. 8, 1976, Pub. L. 94-467, § 5, 90 Stat. 1999.)

HISTORICAL AND REVISION NOTES

Based on section 255 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. § 4062).

Punishment provision was rewritten to make it more definite by substituting a maximum of $5,000 in lieu of the words "fined at the discretion of the court." As thus revised this provision conforms with the first punishment provision of section 111 of this title. So, also, the greater punishment provided by the second paragraph of section 111 was added to this section for offenses involving the use of dangerous weapons.

AMENDMENTS

1976—Pub. L. 94-467 substituted "official guests, and internationally protected persons" for "and official guests" in the section catchline.

Subsec. (a). Pub. L. 94-467 substituted "official guest, or internationally protected person" for "or official guest" and added provision including any other violent attack on the person or the liberty of such official, guest, or protected person, his official premises, private accommodation, or means of transport, or any attempt thereof, as acts subject to fine or imprisonment.

Subsec. (b). Pub. L. 94-467 restructured subsec. (b) and added pars. (2) and (3).

Subsec. (c). Pub. L. 94-467 redesignated former subsec. (d) as (c), and as so redesignated inserted "internationally protected persons" and struck out reference to section 1116(c) of this title. Former subsec. (c), which related to punishment for intimidating or harassing demonstrations against foreign officials or any combination of two or more persons for such purposes, within one hundred feet of any buildings or premises owned by a foreign government located within the United States but outside the District of Columbia was struck out.

Subsec. (d). Pub. L. 94-467 redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94-467 added subsec. (e), and redesignated former subsec. (e) as (d).

Subsec. (f). Pub. L. 94-467 added subsec. (f).

1972—Subsec. (a). Pub. L. 92-539 substituted "Protection of foreign officials and official guests" for "Assaulting certain foreign diplomatic and other official personnel" in the section catchline, designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted "a foreign official or official guest" for "the person of a head of foreign state or foreign government, foreign minister, ambassador or other public minister" and "act" for "acts".

Subsecs. (b) to (e). Pub. L. 92-539 added subsecs. (b) to (e).

1964—Pub. L. 88-493 included heads of foreign states or governments and foreign ministers.

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-467 provided: "That this Act [enacting section 878 of this title, amending this section and sections 11, 970, 1116, and 1201 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons'."

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92-539 provided: "That this Act [enacting sections 970, 1116, and 1117 of this title, amending this section and section 1201 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Act for the Protection of Foreign Officials and Official Guests of the United States'."

STATE AND LOCAL LAWS NOT SUPERSEDED

Section 10 of Pub. L. 94-467 provided that: "Nothing contained in this Act [see Short Title note under this section] shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia, on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia, including the obligation of all persons having official law enforcement powers to take appropriate action, such as effecting arrests, for Federal as well as non-Federal violations."

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Section 2 of Pub. L. 92-539 provided that:

"The Congress recognizes that from the beginning of our history as a nation, the police power to investigate, prosecute, and punish common crimes such as murder, kidnaping, and assault has resided in the several States, and that such power should remain with the States.

"The Congress finds, however, that harassment, intimidation, obstruction, coercion, and acts of violence committed against foreign officials or their family members in the United States or against official guests of the United States adversely affect the foreign relations of the United States.

"Accordingly, this legislation is intended to afford the United States jurisdiction concurrent with that of the several States to proceed against those who by such acts interfere with its conduct of foreign affairs."

FEDERAL PREEMPTION

Section 3 of Pub. L. 92-539 provided that: "Nothing contained in this Act [enacting sections 970, 1116, and 1117 of this title, amending this section and section 1201 of this title, and enacting provisions set out as notes under this section] shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia."

IMMUNITY FROM CRIMINAL PROSECUTION

Section 5 of Pub. L. 88-493 provided that: "Nothing contained in this Act [amending this section, and section 1114 of this title, and enacting former section 170e-1 of Title 5, Executive Departments and Government Officers and Employees] shall create immunity from criminal prosecution under any laws in any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia."

CROSS REFERENCES

Actions or proceedings by ambassadors or other public ministers, jurisdiction of Supreme Court, see section 1251 of Title 28, Judiciary and Judicial Procedure.

Alien's action for tort, jurisdiction of district courts, see section 1350 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 878 of this title; title 22 section 2667.

§ 113. Assaults within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(a) Assault with intent to commit murder or rape, by imprisonment for not more than twenty years.

(b) Assault with intent to commit any felony, except murder or rape, by fine of not more than $3,000 or imprisonment for not more than ten years, or both.

(c) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by fine of not more than $1,000 or imprisonment for not more than five years, or both.

(d) Assault by striking, beating, or wounding, by fine of not more than $500 or imprisonment for not more than six months, or both.

(e) Simple assault, by fine of not more than $300 or imprisonment for not more than three months, or both.

(f) Assault resulting in serious bodily injury, by fine of not more than $10,000 or imprisonment for not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; May 29, 1976, Pub. L. 94-297, § 3, 90 Stat. 585.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 455 (Mar. 4, 1909, ch. 321, § 276, 35 Stat. 1143).

Opening paragraph was added to preserve the jurisdictional limitation provided for by section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title. (See reviser's note thereunder.)

Phraseology was simplified.

AMENDMENTS

1976—Subsec. (f). Pub. L. 94-297 added subsec. (f).

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Attempt to commit murder or manslaughter, see section 1113 of this title.

Wire or oral communications authorization for interception, to provide evidence of murder, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1113 of this title; title 49 section 1472.

§ 114. Maiming within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, and with intent to maim or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance—

Shall be fined not more than $1,000 or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; May 24, 1949, ch. 139, § 3, 63 Stat. 90.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 462 (Mar. 4, 1909, ch. 321, § 283, 35 Stat. 1144).

The words "within the special maritime and territorial jurisdiction of the United States, and" were added to preserve jurisdictional limitation provided for by section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title. (See reviser's note thereunder.)

Changes in phraseology were made.

1949 ACT

This section [section 3] corrects a typographical error in section 114 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, corrected the spelling of "maim".

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

CHAPTER 9—BANKRUPTCY

Sec.
151. Definitions.
152. Concealment of assets; false oaths and claims; bribery.
153. Embezzlement by trustee, receiver or officer.
154. Adverse interest and conduct of referees and other officers.
155. Fee agreements in bankruptcy proceedings.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 104.

§ 151. Definitions

As used in this chapter:

The term "bankrupt" means a debtor by or against whom a petition has been filed under Title 11.

The term "bankruptcy" includes any proceeding, arrangement, or plan pursuant to Title 11.

(June 25, 1948, ch. 645, 62 Stat. 689.)

Historical and Revision Notes

Based on section 52(f) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29f as added June 22, 1938, ch. 575, § 1, 52 Stat. 857).

Definition of "bankruptcy" was added to avoid repetitious references to said title 11.

Minor changes in phraseology was made.

Cross References

General definitions, see section 1 of Title 11, Bankruptcy.

§ 152. Concealment of assets; false oaths and claims; bribery

Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty or[1] perjury as permitted under section 1746 of title 28, United States Code, in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a bankrupt, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting or forbearing to act in any bankruptcy proceeding; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt; or

Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshal, or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt.

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; June 12, 1960, Pub. L. 86-519, § 2, 74 Stat. 217; Sept. 2, 1960, Pub. L. 86-701, 74 Stat. 753; Oct. 18, 1976, Pub. L. 94-550, § 4, 90 Stat. 2535.)

Historical and Revision Notes

Based on section 52(b) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29b, 30 Stat. 554; May 27, 1926, ch. 406, § 11 (part), 44 Stat. 665; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 855).

Section was broadened to apply to one who gives or offers a bribe.

Minor changes were made in phraseology.

References in Text

The bankruptcy law, referred to in text, is classified generally to Title 11, Bankruptcy.

Amendments

1976—Pub. L. 94-550 added paragraph covering the knowing and fraudulent making of a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28 or in relation to any bankruptcy proceeding.

1960—Pub. L. 86-701 included fraudulent transfers and concealment of property by persons in their individual capacity, within sixth paragraph.

Pub. L. 86-519 deleted words "under oath" which followed "knowingly and fraudulently presents" in third paragraph.

Cross References

Bankruptcy investigations; duties of United States attorney, see section 3057 of this title.

Conceal as including secrete, falsify, and mutilate, see section 1 of Title 11, Bankruptcy.

Discharges, refusal to grant when offense committed under this section, see section 32 of Title 11.

Examination of bankrupt, evidence as inadmissible in criminal proceedings, see section 25 of Title 11.

Limitation of prosecutions, see sections 3282, 3284 of this title.

Wire or oral communications, authorization for interception, to provide evidence of bankruptcy fraud offenses, see section 2516 of this title.

Section Referred to in Other Sections

This section is referred to in title 11 sections 32, 104; title 15 sections 78o, 80b-3.

§ 153. Embezzlement by trustee, receiver or officer

Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a bankrupt which came into his charge as trustee, receiver, custodian, marshal, or other officer of the court, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 690.)

Historical and Revision Notes

Based on section 52(a) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29a, 30 Stat. 554; May 27, 1926, ch. 406, § 11 (part), 44 Stat. 665; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 855).

Minor changes were made in phraseology.

[1] So in original. Probably should be "of".

CROSS REFERENCES

Debts of bankrupt created by fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity as not affected by a discharge, see section 35 of Title 11, Bankruptcy.

Embezzlement by court officers, generally, see section 645 of this title.

§ 154. Adverse interest and conduct of referees and other officers

Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or

Whoever, being a referee, receiver, custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a bankruptcy proceeding; or

Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so—

Shall be fined not more than $500, and shall forfeit his office, which shall thereupon become vacant.

(June 25, 1948, ch. 645, 62 Stat. 690.)

HISTORICAL AND REVISION NOTES

Based on section 52(c) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29c, 30 Stat. 554; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 856).

Minor changes were made in phraseology.

§ 155. Fee agreements in bankruptcy proceedings

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership, bankruptcy or reorganization proceeding in any United States court or under its supervision, enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate; or

Whoever, being a judge of a court of the United States knowingly approves the payment of any fees or compensation so fixed—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 690; May 24, 1949, ch. 139, § 4, 63 Stat. 90.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 572a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Aug. 25, 1937, ch. 777, 50 Stat. 810.)

Words "upon conviction" were deleted as surplusage since punishment can be imposed only after a conviction.

A fine of "$5,000" was substituted for "$10,000" and "one year" for "five years", to reduce the offense to the grade of a misdemeanor and the punishment to an amount and term proportionate to the gravity of the offense.

Minor changes were made in phraseology.

1949 ACT

This amendment [see section 4] clarifies section 155 of title 18, U.S.C., by restating the first paragraph thereof in closer conformity with the original law, as it existed at the time of the enactment of the revision of title 18.

AMENDMENTS

1949—Act May 24, 1949, inserted references to attorneys for any party in interest in three places, and substituted "in any United States court or under its supervision" for "in or under the supervision of any court of the United States".

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.
201. Bribery of public officials and witnesses.
202. Definitions.
203. Compensation of Members of Congress, officers and others, in matters affecting the Government.
204. Practice in Court of Claims by Members of Congress.
205. Activities of officers and employees in claims against and other matters affecting the Government.
206. Exemption of retired officers of the uniformed services.
207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.
208. Acts affecting a personal financial interest.
209. Salary of Government officials and employees payable only by United States.
210. Offer to procure appointive public office.
211. Acceptance or solicitation to obtain appointive public office.
212. Offer of loan or gratuity to bank examiner.
213. Acceptance of loan or gratuity by bank examiner.
214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
215. Receipt of commissions or gifts for procuring loans.
216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
217. Acceptance of consideration for adjustment of farm indebtedness.
218. Voiding transactions in violation of chapter; recovery by the United States.
219. Officers and employees acting as agents of foreign principals.
[220 to 222. Redesignated.]
[223. Repealed.]
224. Bribery in sporting contests.

AMENDMENTS

1966—Pub. L. 89-486, § 8(c)(2), July 4, 1966, 80 Stat. 249, added item 219.

1964—Pub. L. 88-316, § 1(b), June 6, 1964, 78 Stat. 204, added item 224.

1962—Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1119, included conflicts of interests in the heading of the chapter, and amended section analysis generally to contain items 201 to 218. Prior to this amendment, the analysis contained items 201 to 223.

1958—Pub. L. 85-699, title VII, § 702(d), Aug. 21 1958, 72 Stat. 698, amended analysis to include small business transactions in item 221.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 1942, 2625.

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section:

"public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

"person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1119, and amended Pub. L. 91-405, title II, § 204(d)(1), Sept. 22, 1970, 84 Stat. 853.)

PRIOR PROVISIONS

A prior section 201, act June 25, 1948, ch. 645, 62 Stat. 691, which prescribed penalties for anyone who offered or gave anything of value to an officer or other person to influence his decisions, was eliminated in the general amendment of this chapter by Pub. L. 87-849, and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in former sections 201 to 213 of this title, prior to the general amendment of this chapter by Pub. L. 87-849.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-405 included Delegate from District of Columbia in definition of "public official".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE

Section 4 of Pub. L. 87-849 provided that: "This Act [adding sections 201 to 209, and 218 of this title, redesignating sections 214, 215, 217 to 222 as 210, 211, 212 to 217 of this title respectively, repealing sections 223, 282, 284, 434, and 1914 of this title, and section 99 of Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under section 281 and 282 of this title] shall take effect ninety days after the date of its enactment [Oct. 23, 1962]".

EX. ORD. NO. 11222. STANDARDS OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831, provided:

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

PART I—POLICY

SECTION 101. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

PART II—STANDARDS OF CONDUCT

SECTION 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission, implementing the provisions of subsection (a) of this section and to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions (1) governing obvious family or personal relationships where the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors—the clearest illustration being the parents, children or spouses of federal employees; (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employee may properly be in attendance; or (3) permitting acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans. This section shall be effective upon issuance of such regulations.

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the Government.

SEC. 202. An employee shall not engage in any outside employment, including teaching, lecturing, or writing, which might result in a conflict, or an apparent conflict, between the private interests of the employee and his official government duties and responsibilities, although such teaching, lecturing, and writing by employees are generally to be encouraged so long as the laws, the provisions of this order, and Civil Service Commission and agency regulations covering conflict of interest and outside employment are observed.

SEC. 203. Employees may not (a) have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees, or (b) engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through their employment. Aside from these restrictions, employees are free to engage in lawful financial transactions to the same extent as private citizens. Agencies may, however, further restrict such transactions in the light of the special circumstances of their individual missions.

SEC. 204. An employee shall not use Federal property of any kind for other than officially approved activities. He must protect and conserve all Federal property, including equipment and supplies, entrusted or issued to him.

SEC. 205. An employee shall not directly or indirectly make use of or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

SEC. 206. An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law.

PART III—STANDARDS OF ETHICAL CONDUCT FOR SPECIAL GOVERNMENT EMPLOYEES

SECTION 301. This part applies to all "special Government employees" as defined in Section 202 of Title 18 of the United States Code, who are employed in the Executive Branch.

SEC. 302. A consultant, adviser or other special Government employee must refrain from any use of his public office which is motivated by, or gives the appearance of being motivated by, the desire for private gain for himself or other persons, including particularly those with whom he has family, business, or financial ties.

SEC. 303. A consultant, adviser, or other special Government employee shall not use any inside informa-

tion obtained as a result of his government service for private personal gain, either by direct action on his part or by counsel, recommendations or suggestions to others, including particularly those with whom he has family, business, or financial ties.

SEC. 304. An adviser, consultant, or other special Government employee shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business, or financial ties.

SEC. 305. An adviser, consultant, or other special Government employe shall not receive or solicit from persons having business with his agency anything of value as a gift, gratuity, loan or favor for himself or persons with whom he has family, business, or financial ties while employed by the government or in connection with his work with the government.

SEC. 306. Each agency shall, at the time of employment of a consultant, adviser, or other special Government employee require him to supply it with a statement of all other employment. The statement shall list the names of all the corporations, companies, firms, State or local governmental organizations, research organizations and educational or other institutions in which he is serving as employee, officer, member, owner, director, trustee, adviser, or consultant. In addition, it shall list such other financial information as the appointing department or agency shall decide is relevant in the light of the duties the appointee is to perform. The appointee may, but need not, be required to reveal precise amounts of investments. The statement shall be kept current throughout the period during which the employee is on the Government rolls.

PART IV—REPORTING OF FINANCIAL INTERESTS

SECTION 401. (a) Not later than ninety days after the date of this order, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and each full-time member of a committee, board, or commission appointed by the President, shall submit to the Chairman of the Civil Service Commission a statement containing the following:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions—

(A) with which he is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(B) in which he has any continuing financial interest, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professional association; or

(C) in which he has any financial interest through the ownership of stocks, bonds, or other securities.

(2) A list of the names of his creditors, other than those to whom he may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom he may be indebted for current and ordinary household and living expenses.

(3) A list of his interests in real property or rights in lands, other than property which he occupies as a personal residence.

(b) Each person who enters upon duty after the date of this order in an office or position as to which a statement is required by this section shall submit such statement not later than thirty days after the date of his entrance on duty.

(c) Each statement required by this section shall be kept up to date by submission of amended statements of any changes in, or addition to, the information required to be included in the original statement, on a quarterly basis.

SEC. 402. The Civil Service Commission shall prescribe regulations, not inconsistent with this part, to require the submission of statements of financial interests by such employees, subordinate to the heads of agencies, as the Commission may designate. The Commission shall prescribe the form and content of such statements and the time or times and places for such submission.

SEC. 403. (a) The interest of a spouse, minor child, or other member of his immediate household shall be considered to be an interest of a person required to submit a statement by or pursuant to this part.

(b) In the event any information required to be included in a statement required by or pursuant to this part is not known to the person required to submit such statement but is known to other persons, the person concerned shall request such other persons to submit the required information on his behalf.

(c) This part shall not be construed to require the submission of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise.

SEC. 404. The Chairman of the Civil Service Commission shall report to the President any information contained in statements required by Section 401 of this part which may indicate a conflict between the financial interests of the official concerned and the performance of his services for the Government. The Commission shall report, or by regulation require reporting, to the head of the agency concerned any information contained in statements submitted pursuant to regulations issued under Section 402 of this part which may indicate a conflict between the financial interests of the officer or employee concerned and the performance of his services for the Government.

SEC. 405. The statements and amended statements required by or pursuant to this part shall be held in confidence, and no information as to the contents thereof shall be disclosed except as the Chairman of the Civil Service Commission or the head of the agency concerned may determine for good cause shown.

SEC. 406. The statements and amended statements required by or pursuant to this part shall be in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or order. The submission of a statement or amended statements required by or pursuant to this part shall not be deemed to permit any person to participate in any matter in which his participation is prohibited by law, regulation, or order.

PART V—DELEGATING AUTHORITY OF THE PRESIDENT UNDER SECTIONS 205 AND 208 OF TITLE 18 OF THE UNITED STATES CODE RELATING TO CONFLICTS OF INTEREST

SECTION 501. As used in this part, "department" means an executive department, "agency" means an independent agency or establishment or a Government corporation. and "head of an agency" means, in the case of an agency headed by more than one person, the chairman or comparable member of such agency.

SEC. 502. There is delegated, in accordance with and to the extent prescribed in Sections 503 and 504 of this part, the authority of the President under Sections 205 and 208(b) of Title 18, United States Code, to permit certain actions by an officer or employee of the Government, including a special Government employee, for appointment to whose position the President is responsible.

SEC. 503. Insofar as the authority of the President referred to in Section 502 extends to any appointee of the President subordinate to or subject to the chairmanship of the head of a department or agency, it is delegated to such department or agency head.

SEC. 504. Insofar as the authority of the President referred to in Section 502 extends to an appointee of the President who is within or attached to a depart-

ment or agency for purposes of administration, it is delegated to the head of such department or agency.

SEC. 505. Notwithstanding any provision of the preceding sections of this part to the contrary, this part does not include a delegation of the authority of the President referred to in Section 502 insofar as it extends to:

(a) The head of any department or agency in the Executive Branch;

(b) Presidential appointees in the Executive Office of the President who are not subordinate to the head of an agency in that Office; and

(c) Presidential appointees to committees, boards, commissions, or similar groups established by the President.

PART VI—PROVIDING FOR THE PERFORMANCE BY THE CIVIL SERVICE COMMISSION OF CERTAIN AUTHORITY VESTED IN THE PRESIDENT BY SECTION 1753 OF THE REVISED STATUTES

SECTION 601. The Civil Service Commission is designated and empowered to perform, without the approval, ratification, or other action of the President, so much of the authority vested in the President by Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [now covered by sections 3301 and 7301 of Title 5] as relates to establishing regulations for the conduct of persons in the civil service.

SEC. 602. Regulations issued under the authority of Section 601 shall be consistent with the standards of ethical conduct provided elsewhere in this order.

PART VII—GENERAL PROVISIONS

SECTION 701. The Civil Service Commission is authorized and directed, in addition to responsibilities assigned elsewhere in this order:

(a) To issue appropriate regulations and instructions implementing Parts II, III, and IV of this order;

(b) To review agency regulations from time to time for conformance with this order; and

(c) To recommend to the President from time to time such revisions in this order as may appear necessary to ensure the maintenance of high ethical standards within the Executive Branch.

SEC. 702. Each agency head is hereby directed to supplement the standards provided by law, by this order, and by regulations of the Civil Service Commission with regulations of special applicability to the particular functions and activities of his agency. Each agency head is also directed to assure (1) the widest possible distribution of regulations issued pursuant to this section, and (2) the availability of counseling for those employees who request advice or interpretation.

SEC. 703. The following are hereby revoked:

(a) Executive Order No. 10939 of May 5, 1961.

(b) Executive Order No. 11125 of October 29, 1963.

(c) Section 2(a) of Executive Order No. 10530 of May 10, 1954.

(d) White House memorandum of July 20, 1961, on "Standards of Conduct for Civilian Employees."

(e) The President's Memorandum of May 2, 1963, "Preventing Conflicts of Interest on the Part of Special Government Employees." The effective date of this revocation shall be the date of issuance by the Civil Service Commission of regulations under Section 701(a) of this order.

SEC. 704. All actions heretofore taken by the President or by his delegates in respect of the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved by the President or by his delegates in respect of such matters, shall, except as they may be inconsistent with the provisions of this order or terminate by operation of law, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 705. As used in this order, and except as otherwise specifically provided herein, the term "agency" means any executive department, or any independent agency or any Government corporation; and the term "employee" means any officer or employee of an agency.

SEC. 706. This Order shall be applicable to the United States Postal Service established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

LYNDON B. JOHNSON.

MEMORANDUM OF ATTORNEY GENERAL REGARDING CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-849, FEB. 1, 1963, 28 F.R. 985

JANUARY 28, 1963.

Public Law 87-849, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes," came into force January 21, 1963. A number of departments and agencies of the Government have suggested that the Department of Justice prepare and distribute a memorandum analyzing the conflict of interest provisions contained in the new act. I am therefore distributing the attached memorandum.

One of the main purposes of the new legislation merits specific mention. That purpose is to help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government. For the most part the conflict of interest statutes superseded by Public Law 87-849 imposed the same restraints on a person serving the Government temporarily or intermittently as on a full-time employee, and those statutes often had an unnecessarily severe impact on the former. As a result, they impeded the departments and agencies in the recruitment of experts for important work. Public Law 87-849 meets this difficulty by imposing a lesser array of prohibitions on temporary and intermittent employees than on regular employees. I believe that a widespread appreciation of this aspect of the new law will lead to a significant expansion of the pool of talent on which the departments and agencies can draw for their special needs.

ROBERT F. KENNEDY,
Attorney General.

MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87-849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87-849 (sometimes referred to hereinafter as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1] In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively.[2] It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES [NEW 18 U.S.C. 202(a)]

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve

the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87-849:[3]

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87-849. The Act dealt with the problem by creating a category of Government employees termed "special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term "special Government employee" to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

Summary of the Main Conflict of Interest Provisions of Public Law 87-849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibilities[4] during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has in interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3, and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source, does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

Comparison of Old and New Conflict of Interest Sections of Title 18, United States Code

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for pros-

ecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.[5]

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the Federal Register, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain post-employment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.[6] The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.[7] Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the FEDERAL REGISTER.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney,* while that made unlawful by the latter is a *personal appearance as agent or attorney.* However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.[8] An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example, the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with a lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matter, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with postemployment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act. (72 Stat. 327, 5 U.S.C. 2301-2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87-849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTEREST OR BRIBERY LAWS

Public Law 87-849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and, under Presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers it grants are "in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States* v. *Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no "final conviction."

Bibliography

Set forth below are the citations to the legislative history of Public Law 87-849 and a list of recent material which is pertinent to a study of the act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

Legislative History of Public Law 87-849 (H.R. 8140, 87th Cong.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation.*
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong., Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflicts of Interest.*
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

Other Material

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.
2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government,* 27 F.R. 1341.
3. 42 Op. A.G. No. 6, January 31, 1962.
4. Memorandum of December 10, 1956, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.
5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).
6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).

Footnotes

[1] Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87-849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of post-employment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87-849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87-849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

[2] See section 2 of Public Law 87-849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces," *infra*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

[4] The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

[5] These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee." However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instant provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

[6] The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

[7] Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a *former* special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87-849, made it unlawful for a former officer or employee to act as agent or attorney for, *or aid or assist,* anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Bribe moneys, disposition, see section 3612 of this title.

Contracts by Members of Congress, see section 431 of this title.

Customs, penal provisions relating to entry of goods, see section 541 et seq. of this title.

Demand or acceptance of gift, fee or illegal payment by revenue officer or agent, see section 7214 of Title 26, Internal Revenue Code.

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 592, 593, 1901, 2071, 2381, 2385, 2387 of this title.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961, 2516 of this title; title 7 section 84; title 12 section 1457.

§ 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States Commissioner or a part-time United States magistrate. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1121, and amended Pub. L. 90-578, title III, § 301(b), Oct. 17, 1968, 82 Stat. 1115.)

REFERENCES IN TEXT

Section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), referred to in subsec. (a), was repealed and the provisions thereof were reenacted as sections 502, 2105(d), and 5534, of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 278.

PRIOR PROVISIONS

A prior section 202, act June 25, 1948, ch. 645, 62 Stat. 691, which prescribed penalties for any officer or other person who accepted or solicited anything of value to influence his decision, was eliminated in the general amendment of this chapter by Pub. L. 87-849, and is substantially covered by revised section 201.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-578 substituted "a part-time United States commissioner, or a part-time United States magistrate" for "or a part-time United States Commissioner".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578, see section 403 of Pub. L. 90-578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

STANDARDS OF ETHICAL CONDUCT FOR SPECIAL GOVERNMENT EMPLOYEES

Standards of ethical conduct for special government employees, see Part III of Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 sections 209, 1457; title 16 section 984; title 26 section 4946; title 40 App. section 108; title 42 section 3188.

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and sub-

stantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, or employee—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1121, and amended Pub. L. 91-405, title II, § 204(d)(2), (3), Sept. 22, 1970, 84 Stat. 853.)

PRIOR PROVISIONS

A prior section 203, act June 25, 1948, ch. 645, 62 Stat. 692, which related to the acceptance or demand by district attorneys, or marshals and their assistants of any fee other than provided by law, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 281 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91-405, § 204(d)(2), included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

Subsec. (b). Pub. L. 91-405, § 204(d)(3), included reference to Delegate.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

CANAL ZONE

Applicability of section to canal zone, see section 14 of this title.

CROSS REFERENCES

Activities of officers and employees in matters affecting the Government, see section 205 of this title.

Definitions, see section 202 of this title.

Department of Health, Education and Welfare, applicability of this section to State personnel assigned to, see section 246 of Title 42, The Public Health and Welfare.

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 201, 204, 592, 593, 1901, 2071, 2381, 2385, 2387 of this title.

Exemption of retired officers of the uniformed services, see section 206 of this title.

Extortion by government officers or employees, see section 872 of this title.

Lobbying with appropriated moneys, see section 1913 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

National Science Foundation, nonapplicability of section to certain officers, see section 1873 of Title 42, The Public Health and Welfare.

Office of Education, applicability of this section to State personnel assigned to, see section 867 of Title 20, Education.

Partners subject to section, see section 207 of this title.

Political contributions, solicitation of, see section 602 of this title.

Regional Action Planning Commissions, applicability of this section to Federal co-chairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

Renegotiation of war and defense contracts, persons authorized to prosecute claims, see section 1191 of Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202, 205, 206, 207 of this title; title 5 section 3374; title 12 section 1457; title 30 section 663; title 38 section 3402; title 40 App. section 108; title 42 sections 246, 3188.

§ 204. Practice in Court of Claims by Members of Congress

Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the Court of Claims, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122, and amended Pub. L. 91-405, title II, § 204(d)(2), Sept. 22, 1970, 84 Stat. 853.)

PRIOR PROVISIONS

A prior section 204, act June 25, 1948, ch. 645, 62 Stat. 692, which related to an offer to influence a Member of Congress, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to this section were contained in former section 282 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

AMENDMENTS

1970—Pub. L. 91-405 included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date a note under section 201 of this title.

CROSS REFERENCES

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 201, 203, 592, 593, 1901, 2071, 2381, 2385, 2387 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 App. section 108; title 42 section 3188.

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided,* That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122.)

PRIOR PROVISIONS

A prior section 205, act June 25, 1948, ch. 645, 62 Stat. 692, which related to the acceptance by a Member of Congress of anything of value to influence him, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 283 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

DELEGATION OF AUTHORITY

Authority of the President under this section delegated to department or agency heads, see Part V of Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of this title.

CANAL ZONE

Applicability of section to canal zone, see section 14 of this title.

CROSS REFERENCES

Civil War Centennial Commission, service as member of Commission not service or employment within provisions of this section, see section 747 of Title 36, Patriotic Societies and Observances.

Claims generally, see section 191 et seq. of Title 31, Money and Finance.

Definitions, see section 202 of this title.

Department of Health, Education and Welfare, applicability of this section to State personnel assigned to, see section 246 of Title 42, The Public Health and Welfare.

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 1901, 2071, 2381, 2385, 2387 of this title.

Exemption of retired officers of the uniformed services, see section 206 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Partners subject to section, see section 207 of this title.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

Renegotiation of war and defense contracts, persons authorized to prosecute claims, see section 1191 of Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202, 206, 207 of this title; title 5 section 3374; title 12 section 1457; title 25 section 450l; title 30 section 663; title 38 section 3402; title 40 App. section 108; title 41 section 120; title 42 sections 246, 3188.

§ 206. Exemption of retired officers of the uniformed services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

PRIOR PROVISIONS

A prior section 206, act June 25, 1948, ch. 645, 62 Stat. 692, which related to an offer to a judge or judicial officer to influence him, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

CROSS REFERENCES

Definitions, see section 202 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 202 of this title; title 38 section 3402; title 40 App. section 108; title 42 section 3188.

§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

PRIOR PROVISIONS

A prior section 207, act June 25, 1948, ch. 645, 62 Stat. 692, which related to the acceptance of a bribe by a judge, was eliminated by the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 284 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Civil War Centennial Commission, service as member of Commission not service or employment within provisions of this section, see section 747 of Title 36, Patriotic Societies and Observances.

Definitions, see section 202 of this title.

Department of Health, Education and Welfare, applicability of this section to State personnel assigned to, see section 246 of Title 42, The Public Health and Welfare.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Officials appointed under laws and regulations of the Universal Military Training and Service System, nonapplicability of this section to, see section 463(a) of Title 50, App., War and National Defense.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

Renegotiation of war and defense contracts, persons authorized to prosecute claims, see section 1191 of Title 50, App., War and National Defense.

Surplus property, disposal of, restriction on practice by former government officers and employees and commissioned officers, see section 471 et seq. of Title 40, Public Buildings, Property, and Works.

Wartime suspension of limitations, see section 3287 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 5 section 3374; title 12 section 1457; title 25 section 450i; title 30 section 663; title 38 section 3402; title 40 App. section 108; title 42 sections 246, 3188.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other preceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1124.)

PRIOR PROVISIONS

A prior section 208, act June 25, 1948, ch. 645, 62 Stat. 693, which related to the acceptance of solicitation of a bribe by a judicial officer, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 434 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

DELEGATION OF AUTHORITY

Authority of the President under subsec. (b) of this section delegated to department or agency heads, see Part V of Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Definitions, see section 202 of this title.

Department of Health, Education and Welfare, applicability of this section to State personnel assigned to, see section 246 of Title 42, The Public Health and Welfare.

Mail contracts, conflict of interest, see section 440 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Purchase of certain claims against United States forbidden, see section 291 of this title.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

Salary of government officials and employees payable only by the United States, see section 209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 5 section 3374; title 12 section 1457; title 15 section 763; title 40 App. section 108; title 42 sections 246, 3188.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1-828 of the District of Columbia Code.

§ 209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1125.)

REFERENCES IN TEXT

The Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958), referred to in text, was repealed and the provisions thereof reenacted as chapter 41 of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378. Section 7(b) of Pub. L. 89-554, provided "A reference to a law replaced by sections 1-6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act."

PRIOR PROVISIONS

A prior section 209, act June 25, 1948, ch. 645, 62 Stat. 693, which related to an offer of a bribe to a witness, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by section 201.

Provisions similar to those comprising this section were contained in section 1914 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Acceptance of contributions, awards and other payments incident to training without regard to this section, see section 4111 of Title 5, Government Organization and Employees.

Definitions, see section 202 of this title.

Department of Agriculture officials and employees not subject to this section, see section 2220 of Title 7, Agriculture.

Department of Health, Education, and Welfare, applicability of this section to State personnel assigned to, see section 246 of Title 42, The Public Health and Welfare.

Doctors, hospitals, etc., performing services in connection with benefits under Railroad Unemployment Insurance Act exempt from this section, see section 362 of Title 45, Railroads.

Forest Service officials and employees not subject to this section, see section 2220 of Title 7, Agriculture.

Immigration officials, section not to prevent receipt of reimbursements for services incident to inspection of aliens in foreign contiguous territory, see section 1353c of Title 8, Aliens and Nationality.

International organizations, payment of employees detailed to without regard to this section, see section 3343 of Title 5, Government Organization and Employees.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Railroad Retirement Board employees administrating Railroad Unemployment Insurance Act exempt from this section, see section 362 of Title 45, Railroads.

Reading assistants for blind employees, payment without regard to this section, see section 3102 of Title 5, Government Organization and Employees.

Regional Action Planning Commissions, applicability of this section to Federal cochairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 5 sections 3102, 3343, 3374, 4111; title 12 section 1457; title 30 section 663; title 40 App. section 108; title 42 sections 246, 3188.

§ 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 694, § 210, formerly § 214, renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(b), 76 Stat. 1125.)

HISTORICAL and REVISION NOTES

Based on Title 18, U. S.C., 1940 ed., §§ 149 and 151 (Dec. 11, 1926, c. 3, §§ 1, 3, 44 Stat. 918).

Changes of style and substance were made in this section.

Term "or place" was inserted after words "appointive office" in order to give broader scope to the section and also to follow the phraseology used in similar provisions of section 202 of Title 18, U.S.C., 1940 ed., now section 216 [repealed] of this title. (See 46 Corpus Juris 924, where it is explained that the work "places" is used in a less technical sense than the word "offices".)

The punishment provision, added at the end of this section and section 215 [now section 211] of this title to secure uniformity of style throughout this chapter, was originally enacted as a separate section, incorporating the other two by reference. 80th Congress House Report No. 304.

PRIOR PROVISIONS

A prior section 210, act June 25, 1948, ch. 645, 62 Stat. 693, which related to acceptance of a bribe by a witness, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered in revised section 201.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title.

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 694, § 211, formerly § 215, amended Sept. 13, 1951, ch. 380, 65 Stat. 320, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(b), 76 Stat. 1125.)

HISTORICAL and REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 150 and 151 (Dec. 11, 1926, ch. 3, §§ 2, 3, 44 Stat. 918).

Same changes of style and substance were made in this section as in section 214 of this title.

PRIOR PROVISIONS

A prior section 211, act June 25, 1948, ch. 645, 62 Stat. 693, which related to an offer of a gratuity to a revenue officer, was eliminated in the general amendment of this chapter by Pub. L. 87-849 and is substantially covered in revised section 201.

AMENDMENTS

1951—Act Sept. 13, 1951, added second paragraph.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title.

§ 212. Offer of loan or gratuity to bank examiner

Whoever, being an officer, director or employee of a bank which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or of any National Agricultural Credit Corporation, or of any land bank, Federal land bank association or other institution subject to examination by a farm credit examiner, or of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, corporation, or institution, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 218 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank.

(June 25, 1948, ch. 645, 62 Stat. 694, § 212, formerly § 217, amended Aug. 21, 1958, Pub. L. 85-699, title VII, § 701(a), 72 Stat. 698; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL and REVISION NOTES

Based on sections 593 and 1245 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, 38 Stat. 272; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, § 209(e), 42 Stat. 1468; Feb. 25, 1927, ch. 191, § 15, 44 Stat. 1232; Aug. 23, 1935, ch. 614, § 326(a), 49 Stat. 715).

Section 593 of title 12, U.S.C., 1940 ed., Banks and Banking, was divided into three sections: this section and sections 218 and 655 of this title.

Words "shall be deemed guilty of a misdemeanor and" were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

This section was expanded to include "National Agricultural Credit Corporations" by including this term in each paragraph, upon authority of section 1245 of title 12, U.S.C., 1940 ed., Banks and Banking.

No penalty was provided for offering a bribe to farm credit examiners. The words "or of any land bank, na-

tional farm loan association, or other institution subject to examination by a farm credit examiner," were added upon the authority of section 952 of said title 12.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes in phraseology were also made.

REFERENCES IN TEXT

Section 218 of this title, referred to in the text, is a reference to section 218 prior to its redesignation as section 213 of this title by section 1(d) of Pub. L. 87-849.

PRIOR PROVISIONS

A prior section 212, act June 25, 1948, ch. 645, 62 Stat. 693, which related to an offer or threat to a customs officer or employee, was eliminated in the general amendment to this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

AMENDMENTS

1959—Pub. L. 86-168 substituted "Federal land bank association" for "national farm loan association".

1958—Pub. L. 85-699 included officers, directors and employees of small business investment companies.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86-168.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, title II, §§ 201-217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was substantially repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System for violating or permitting violation of this section, see section 503 of Title 12, Banks and Banking.

§ 213. Acceptance of loan or gratuity by bank examiner

Whoever, being an examiner or assistant examiner of member banks of the Federal Reserve System or banks the deposits of which are insured by the Federal Deposit Insurance Corporation, or a farm credit examiner or examiner of National Agricultural Credit Corporations, or an examiner of small business investment companies, accepts a loan or gratuity from any bank, corporation, association or organization examined by him or from any person connected herewith, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

(June 25, 1948, ch. 645, 62 Stat. 695, § 213, formerly § 218, amended Aug. 21, 1958, Pub. L. 85-699, title VII, § 701(b), 72 Stat. 698, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL AND REVISION NOTES

Based on sections 593, 952, 981, 1124, 1243, 1314 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, 38 Stat. 272; July 17, 1916, ch. 245, §§ 28, 31, 39 Stat. 381, 382, and § 211(d) as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, § 209(e), 216(d), 42 Stat. 1468, 1471; Feb. 25, 1927, ch. 191, § 15, 44 Stat. 1232; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, § 80(a), 48 Stat. 273; Aug. 23, 1935, ch. 614, § 326(a), 49 Stat. 715; Aug. 19, 1937, ch. 704, § 20, 50 Stat. 710).

This section is derived primarily from second paragraph of section 593 of title 12, U.S.C., 1940 ed., Banks and Banking, and consolidates provisions from sections 952, 981, 1124, 1243, and 1314 of said title 12.

Words "shall be deemed guilty of a misdemeanor" were omitted in view of definition of misdemeanor in section 1 of this title.

The bribery provisions of such sections were alike and indeed were patterned after section 593 of said title 12, U.S.C., 1940 ed., Banks and Banking, incorporated in this section and section 217 of this title. Therefore, and in the light of sections 952 and 1243 of title 12, U.S.C., 1940 ed., Banks and Banking, this section was written as a consolidated section without change of substance or effect and with only such changes of phraseology as were necessary to effect the consolidation and secure uniformity of style.

Other provisions of said sections 593, 952, 981, 1124, 1243 and 1314 of title 12, U.S.C., 1940 ed., are incorporated in sections 217, 655, 1014, 1908, and 1909 of this title.

PRIOR PROVISIONS

A prior section 213, act June 25, 1948, ch. 645, 62 Stat. 693, which related to the acceptance or demand of a bribe by a customs officer or employee, was eliminated in the general amendment to this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

AMENDMENTS

1958—Pub. L. 85-699 included examiners of small business investment companies.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, title II, §§ 201-217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was substantially repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Civil liability of officers or directors for violations, see section 503 of Title 12, Banks and Banking.

Offer of loan or gratuity to public examiners, see section 212 of this title.

Secret Service, arrest of violators, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 3056 of this title.

§ 214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper

Whoever stipulates for or gives or receives, or consents or agrees to give or receive, any fee,

commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit or discount or purchase of any obligation or commitment with respect thereto, either directly from such Federal Reserve bank or indirectly through any financing institution, unless such fee, commission, bonus, or thing of value and all material facts with respect to the arrangement or understanding therefor shall be disclosed in writing in the application or request for such advance, loan, extension of credit, discount, purchase, or commitment, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 695, § 214, formerly § 219, renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL AND REVISION NOTES

Based on section 599 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22(k), as added by act June 19, 1934, ch. 653, § 3, 48 Stat. 1108).

Final sentence of said section 599, imposing civil liability on violators, was omitted as unnecessary, being merely a declaration of that rule of common law which in the absence of statute fixes civil liability on the wrongdoer.

Minor changes were made in phraseology.

PRIOR PROVISIONS

A prior section 214 of this title was redesignated section 210.

CROSS REFERENCES

Liability of directors and officers of member banks, see section 503 of Title 12, Banks and Banking.

§ 215. Receipt of commissions or gifts for procuring loans

Whoever, being an officer, director, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee, commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both.

(June 25, 1948, ch. 645, 62 Stat. 695, § 215, formerly § 220, amended Sept. 21, 1950, ch. 967, § 4, 64 Stat. 894, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL AND REVISION NOTES

Based on sections 595, 1125, and 1315 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, first sentence of second paragraph, 38 Stat. 272; July 17, 1916, ch. 245, § 211(e), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; June 21, 1917, ch. 32, § 11, 40 Stat. 240; Sept. 26, 1918, ch. 177, § 5, part 22(c), 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, § 216(e), 42 Stat. 1472).

The punishment provisions of the three sections were identical, and all other provisions thereof were similar, except that section 595 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to officers, directors, employees, or attorneys of member banks of the Federal Reserve System, did not include the terms "agent" and "acceptance" and did not include the phrase "or extension or renewal of loan or substitution of security".

Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in section 1 of this title.

Words "and upon conviction" and "and shall upon conviction thereof" were omitted as surplusage because punishment cannot be imposed until after conviction.

Verbal changes were made for style purposes.

PRIOR PROVISIONS

A prior section 215 of this title was redesignated section 211.

AMENDMENTS

1950—Act Sept. 21, 1950, substituted "any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation" for "a member bank of the Federal Reserve System".

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, title II, §§ 201-217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was substantially repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System, see section 503 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions

Whoever, being an officer, director, attorney, or employee of a Federal land bank association, a Federal land bank, or a joint-stock land bank, organized or acting under authority of any law of the United States, or a small business investment company, is a beneficiary of or receives, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank, other than the usual salary or director's fee paid to such officer, director, or employee thereof, and a reasonable fee paid by such association or bank to such officer, director, attorney, or employee for services rendered, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Whoever causes or procures any Federal land bank, joint-stock land bank or Federal land bank association, organized under any Act of Congress, or any small business investment company, to charge or receive any fee, commission, bonus, gift, or other consideration not specifically authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 695, § 216, formerly § 221, amended Aug. 21, 1958, Pub. L. 85-699, title VII, § 702(a)-(c), 72 Stat. 698; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL AND REVISION NOTES

Based on section 983 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31, 39 Stat. 382).

Section was formed from the first, second, and fourth sentences of said section 983 of title 12, U.S.C., 1940 ed., Banks and Banking. No change was made other than the usual verbal changes for style purposes, and some transposition of phrases incident to separation and consolidation of these particular sentences.

Words "organized or acting under authority of any law of the United States" were substituted for "organized under this chapter" because of the transfer.

The third sentence of said section 983 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to disclosure of information by examiners, was separated and transferred to the chapter "Public Officers and Employees" in this title, where it was consolidated with similar provisions taken from section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, to constitute section 1907 of this title, the punishment provisions of both sections, insofar as relating to such disclosure, being identical.

PRIOR PROVISIONS

A prior section 216, act June 25, 1948, ch. 645, 62 Stat. 694, which related to the procurement of a contract by an officer or Member of Congress, was repealed by section 1(c) of Pub. L. 87-849.

AMENDMENTS

1959—Pub. L. 86-168 substituted "Federal land bank association" for "national farm loan association" wherever appearing.

1958—Pub. L. 85-699 included small business transactions in the catchline, officers, directors, attorneys and employees of small business investment companies in the first paragraph, and small business investment companies in the second paragraph.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86-168.

CROSS REFERENCES

Secret service, detection, arrest, and delivery into custody of any person violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 12 section 209; title 36 section 747.

§ 217. Acceptance of consideration for adjustment of farm indebtedness

Whoever, being an officer or employee of, or person acting for the United States or any agency thereof, accepts any fee, commission, gift, or other consideration in connection with the compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 696, § 217, formerly § 222, renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORICAL AND REVISION NOTES

Based on section 1150c(b) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 20, 1944, ch. 623, § 4(b), 58 Stat. 837).

Words "upon conviction thereof" were omitted as surplusage, since punishment cannot be imposed until after conviction.

Other changes were made in phraseology without change of substance.

PRIOR PROVISIONS

A prior section 217 of this title was redesignated section 212.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 503.

§ 218. Voiding transactions in violation of chapter; recovery by the United States

In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

(Added Pub. L. 87-849, § 1(e), Oct. 23, 1962, 76 Stat. 1125.)

PRIOR PROVISIONS

A prior section 218 of this title was redesignated section 213.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Definitions, see section 202 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Secret Service, detection and arrest of persons violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202, 212, 3056 of this title; title 12 section 503.

§ 219. Officers and employees acting as agents of foreign principals

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a for-

eign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(Added Pub. L. 89-486, § 8(b), July 4, 1966, 80 Stat. 249.)

REFERENCES IN TEXT

The Foreign Agents Registration Act of 1938, as amended, referred to in text, is act June 8, 1938, ch. 327, 52 Stat. 631, which is classified generally to subchapter II (§ 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables volume.

Section 6 of the Foreign Agents Registration Act of 1938, as amended, referred to in the text, is classified to section 616 of Title 22.

PRIOR PROVISIONS

A prior section 219 was redesignated section 214.

EFFECTIVE DATE

Section effective ninety days after July 4, 1966, see section 9 of Pub. L. 89-486, set out as an Effective Date of 1966 Amendment note under section 611 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 503.

[§§ 220 to 222. Redesignated]

Sections, act June 25, 1948, ch. 645, 62 Stat. 695, 696, were redesignated as sections 215 to 217 by Pub. L. 87-849, § 1(d), Oct. 23, 1962, 76 Stat. 1125.

[§ 223. Repealed. Pub. L. 87-849, § 1(c), Oct. 23, 1962, 76 Stat. 1125]

Section, act June 25, 1948, ch. 645, 62 Stat. 696, related to transactions of the Home Owners' Loan Corporation.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

§ 224. Bribery in sporting contests

(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

(c) As used in this section—

(1) The term "scheme in commerce" means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

(2) The term "sporting contest" means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

(3) The term "person" means any individual and any partnership, corporation, association, or other entity.

(Added Pub. L. 88-316, § 1(a), June 6, 1964, 78 Stat. 203.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

CHAPTER 12—CIVIL DISORDERS

Sec.
231. Civil disorders.
232. Definitions.
233. Preemption.

AMENDMENTS

1968—Pub. L. 90-284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90, added chapter 12 and items 231 to 233.

§ 231. Civil disorders

(a)(1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or

(2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or

(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his of-

ficial duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

(Added Pub. L. 90-284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90.)

SHORT TITLE

Section 1001 of Pub. L. 90-284 provided that: "This title [which enacted this chapter] may be cited as the 'Civil Obedience Act of 1968'."

§ 232. Definitions

For purposes of this chapter:

(1) The term "civil disorder" means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

(2) The term "commerce" means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia.

(3) The term "federally protected function" means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof; and such term shall specifically include, but not be limited to, the collection and distribution of the United States mails.

(4) The term "firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

(5) The term "explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile, or similar device, and (C) any incendiary bomb or grenade, fire bomb, or similar device, including any device which (i) consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual acting alone.

(6) The term "fireman" means any member of a fire department (including a volunteer fire department) of any State, any political subdivision of a State, or the District of Columbia.

(7) The term "law enforcement officer" means any officer or employee of the United States, any State, any political subdivision of a State, or the District of Columbia, while engaged in the enforcement or prosecution of any of the criminal laws of the United States, a State, any political subdivision of a State, or the District of Columbia; and such term shall specifically include, but shall not be limited to, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State, or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, not included within the definition of National Guard as defined by such section 101(9), and members of the Armed Forces of the United States, while engaged in suppressing acts of violence or restoring law and order during a civil disorder.

(Added Pub. L. 90-284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 91.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 844 of this title; title 49 sections 1472, 1806.

§ 233. Preemption

Nothing contained in this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which any provisions of the chapter operate to the exclusion of State or local laws on the same subject matter, nor shall any provision of this chapter be construed to invalidate any provision of State law unless such provision is inconsistent with any of the purposes of this chapter or any provision thereof.

(Added Pub. L. 90-284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 91.)

CHAPTER 13—CIVIL RIGHTS

Sec.
241. Conspiracy against rights of citizens.
242. Deprivation of rights under color of law.
243. Exclusion of jurors on account of race or color.
244. Discrimination against person wearing uniform of armed forces.
245. Federally protected activities.
246. Deprivation of relief benefits.

AMENDMENTS

1976—Pub. L. 94-453, § 4(b), Oct. 2, 1976, 90 Stat. 1517, added item 246.

1968—Pub. L. 90-284, title I, § 102, Apr. 11, 1968, 82 Stat. 75, added item 245.

§ 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

(June 25, 1948, ch. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, title I, § 103(a), 82 Stat. 75.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 51 (Mar. 4, 1909, ch. 321, § 19, 35 Stat. 1092).

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligi-

bility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act.

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

AMENDMENTS

1968—Pub. L. 90-284 increased limitation on fines from $5,000 to $10,000 and provided for imprisonment for any term of years or for life when death results.

CROSS REFERENCES

Action for neglect to prevent, see section 1986 of Title 42, The Public Health and Welfare.

Conspiracy to commit offense or to defraud United States, see section 371 of this title.

Conspiracy to interfere with civil rights, see section 1985 of Title 42, The Public Health and Welfare.

Proceedings in vindication of civil rights, see section 1988 of Title 42.

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(June 25, 1948, ch. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, title I, § 103(b), 82 Stat. 75.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 52 (Mar. 4, 1909, ch. 321, § 20, 35 Stat. 1092).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

A minor change was made in phraseology.

AMENDMENTS

1968—Pub. L. 90-284 provided for imprisonment for any term of years or for life when death results.

CROSS REFERENCES

Civil action for deprivation of rights, see section 1983 of Title 42, The Public Health and Welfare.

Equal rights under the law, see section 1981 of Title 42.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

Proceedings in vindication of civil rights, see section 1988 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3401 of this title.

§ 243. Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

(June 25, 1948, ch. 645, 62 Stat. 696.)

HISTORICAL AND REVISION NOTES

Based on section 44 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Mar. 1, 1875, ch. 114, § 4, 18 Stat. 336).

Words "be deemed guilty of a misdemeanor, and" were deleted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Words "on conviction thereof" were omitted as unnecessary, since punishment follows only after conviction.

Minimum punishment provisions were omitted. (See reviser's note under section 203 of this title.)

Minor changes in phraseology were made.

CROSS REFERENCES

Bribery of public officials and witnesses, see section 201 of this title.

Civil rights generally, see section 1981 et seq. of Title 42, The Public Health and Welfare.

Exclusion or excuse from jury service, see section 1863 of Title 28, Judiciary and Judicial Procedure.

Grand jurors, number of and summoning additional jurors, see section 3321 of this title.

Juries generally, see section 1861 et seq. of Title 28, Judiciary and Judicial Procedure.

Manner of drawing jurors, see section 1864 of Title 28.

Qualifications of jurors, see section 1861 of Title 28.

Summoning jurors, see section 1867 of Title 28.

FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see rule 47, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Grand jury, see rule 6, Appendix to this title.

Trial jurors, see rule 24.

§ 244. Discrimination against person wearing uniform of armed forces

Whoever, being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States, causes any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform, shall be fined not more than $500.

(June 25, 1948, ch. 645, 62 Stat. 697; May 24, 1949, ch. 139, § 5, 63 Stat. 90.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 523 (Mar. 1, 1911, ch. 187, 36 Stat. 963; Aug. 24, 1912, ch. 387, § 1, 37 Stat. 512; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800).

Words "guilty of a misdemeanor", following "shall be", were omitted as unnecessary in view of definition of "misdemeanor" in section 1 of this title. (See reviser's note under section 212 of this title.)

Changes were made in phraseology.

1949 ACT

This section [section 5] substitutes, in section 244 of title 18, U.S.C., "any of the armed forces of the United States" for the enumeration of specific branches and thereby includes the Air Force, formerly part of the Army. This clarification is necessary because of the establishment of the Air Force as a separate branch of the Armed Forces by the act of July 26, 1947.

AMENDMENTS

1949—Act May 24, 1949, substituted "any of the armed forces of the United States" for enumeration of the specific branches.

CROSS REFERENCES

Uniforms, wearing without authority, see section 702 of this title.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating or in enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits

or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

(Added Pub. L. 90-284, title I, § 101(a), Apr. 11, 1968, 82 Stat. 73.)

FAIR HOUSING

Section 101(b) of Pub. L. 90-284 provided that: "Nothing contained in this section [enacting this section] shall apply to or affect activities under title VIII of this Act [sections 3601 to 3619 of Title 42, The Public Health and Welfare]."

RIOTS OR CIVIL DISTURBANCES, SUPPRESSION AND RESTORATION OF LAW AND ORDER; ACTS OR OMISSIONS OF ENFORCEMENT OFFICERS AND MEMBERS OF MILITARY SERVICE NOT SUBJECT TO THIS SECTION

Section 101(c) of Pub. L. 90-284 provided that: "The provisions of this section [enacting this section] shall not apply to acts or omissions on the part of law enforcement officers, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State or the District of Columbia, not covered by such section 101(9), or members of the Armed Forces of the United States, who are engaged in suppressing a riot or civil disturbance or restoring law and order during a riot or civil disturbance."

§ 246. Deprivation of relief benefits

Whoever directly or indirectly deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible in whole or in part by any Act of Congress appropriating funds for work relief or relief purposes, on account of political affiliation, race, color, sex, religion, or national origin, shall be fined not more than $10,000, or imprisoned not more than one year, or both.

(Added Pub. L. 94-453, § 4(a), Oct. 2, 1976, 90 Stat. 1517.)

CHAPTER 15—CLAIMS AND SERVICES IN MATTERS AFFECTING GOVERNMENT

Sec.
281. Compensation to Members of Congress, officers, and others in matters affecting the Government.[1]
282. Practice in Court of Claims by Members of Congress.[1]
283. Officers or employees interested in claims against the Government.[1]
284. Disqualifications of former officers and employees in matters connected with former duties.[1]
285. Taking or using papers relating to claims.
286. Conspiracy to defraud the Government with respect to claims.
287. False, fictitious or fraudulent claims.
288. False claims for postal losses.
289. False claims for pensions.
290. Discharge papers withheld by claim agent.
291. Purchase of claims for fees by court officials.
292. Solicitation of employment and receipt of unapproved fees concerning Federal employees' compensation.

AMENDMENTS

1966—Pub. L. 89-554, § 3(a), Sept. 6, 1966, 80 Stat. 608, added item 292.

[§§ 281 to 284. Repealed. Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section 281, acts June 25, 1948, ch. 645, 62 Stat. 697; May 24, 1949, ch. 139, § 6, 63 Stat. 90, related to compensation to Members of Congress, officers and others in matters affecting the government.

Section 282, act June 25, 1948, ch. 645, 62 Stat. 697, related to practice in Court of Claims by Members of Congress.

Section 283, acts June 25, 1948, ch. 645, 62 Stat. 697; June 28, 1949, ch. 268, § 2(b), 63 Stat. 280, related to officers or employees interested in claims against the government.

Section 284, acts June 25, 1948, ch. 645, 62 Stat. 698; May 24, 1949, ch. 139, § 7, 63 Stat. 90, related to disqualifications of former officers and employees in matters connected with former duties.

Such sections 281, 282, 283 and 284 have been supplanted by sections 203, 204, 205, and 207 of this title, respectively.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

EXEMPTIONS

Section 2 of Pub. L. 87-849 provided in part that: "All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act

[1] Sections repealed without amending analysis to reflect such repeal.

[see Effective Date note under section 201 of this title] shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable."

EXCEPTION OF RETIRED OFFICERS OF THE ARMED FORCES

The repeal of sections 281 and 283 by Pub. L. 87-849 was a limited repeal only, in that, under section 2 of Pub. L. 87-849, such sections would continue to apply to retired officers of the Armed Forces of the United States. For purposes of such limited applicability, sections 281 and 283 are set out as follows:

"§ 281. Compensation to Members of Congress, officers, and others in matters affecting the Government.

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress.

"§ 283. Officers or employees interested in claims against the Government.

"Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress."

§ 285. Taking or using papers relating to claims

Whoever, without authority, takes and carries away from the place where it was filed, deposited, or kept by authority of the United States, any certificate, affidavit, deposition, statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper prepared, fitted, or intended to be used or presented to procure the payment of money from or by the United States or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof has or has not already been allowed or paid; or

Whoever presents, uses, or attempts to use any such document, record, file, or paper so taken and carried away, to procure the payment of any money from or by the United States, or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 698.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 92 (Mar. 4, 1909, ch. 321, § 40, 35 Stat. 1096).

Word "employee" was inserted after "officer" in two places to clarify scope of section.

The words "five years" were substituted for "ten years" in the punishment provision to conform to like provisions in similar offenses. (See section 1001 of this title.)

Changes were made in phraseology.

CROSS REFERENCES

Claims generally, see section 191 et seq. of Title 31, Money and Finance.

§ 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 698.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 83 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

To clarify meaning of "department" the word "agency" was inserted after it. (See definitions of "department" and "agency" in section 6 of this title.)

Words "or any corporation in which the United States of America is a stockholder" were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

Minor changes in phraseology were made.

CROSS REFERENCES

Conspiracy to defraud United States, generally, see section 371 of this title.

False pension claims, see section 3503 of Title 38, Veterans' Benefits.

Liability of persons making false claims; suits and procedure; duty of district attorneys; limitation of suits, see sections 231 to 233, 235 of Title 31, Money and Finance.

National Service Life Insurance, false or fraudulent statements, see section 787 of Title 38, Veterans' Benefits.

Wartime suspension of limitations, see section 3287 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 698.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 80 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Section 80 of title 18, U.S.C., 1940 ed., was divided into two parts. That portion making it a crime to present false claims was retained as this section. The part relating to false statements is now section 1001 of this title.

To clarify meaning of "department" words "agency" and "or agency" were inserted after it. (See definitions of "department" and "agency" in section 6 of this title.)

Words "or any corporation in which the United States of America is a stockholder" which appeared in two places were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

The words "five years" were substituted for "ten years" to harmonize the punishment provisions of comparable sections involving offenses of the gravity of felonies, but not of such heinous character as to warrant a 10-year punishment. (See sections 914, 1001, 1002, 1005, 1006 of this title.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

False statements or entries, generally, see section 1001 of this title.

Humane slaughter of livestock, prosecution for false claims, see section 1903 of Title 7, Agriculture.

Liability of persons making false claims; jurisdiction and parties; duty of district attorneys; rights of plaintiffs; limitation of suits, see sections 231 to 233, 235 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 7 section 1903; title 12 section 1457.

§ 288. False claims for postal losses

Whoever makes, alleges, or presents any claim or application for indemnity for the loss of any registered or insured letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or

Whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, makes or uses any false statement, certificate, affidavit, or deposition; or

Whoever knowingly and willfully misrepresents, or misstates, or, for the purpose aforesaid, knowingly and willfully conceals any material fact or circumstance in respect of any such claim or application for indemnity—

Shall be fined not more than $500 or imprisoned not more than one year, or both.

Where the amount of such claim or application for indemnity is less than $100 only a fine shall be imposed.

(June 25, 1948, ch. 645, 62 Stat. 698.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 354 (Mar. 4, 1909, ch. 321, § 224, 35 Stat. 1133; Aug. 5, 1939, ch. 429, 53 Stat. 1203).

Reference to persons causing, assisting, aiding, or abetting, was omitted as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

CROSS REFERENCES

False statements or entries, generally, see section 1001 of this title.

Registered mail, see section 5001 et seq. of Title 39, Postal Service.

§ 289. False claims for pensions

Whoever knowingly and willfully makes, or presents any false, fictitious or fraudulent affidavit, declaration, certificate, voucher, endorsement, or paper or writing purporting to be such, concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Administrator of Veterans' Affairs, or knowingly or willfully makes or presents any paper required as a voucher in drawing a pension, which paper bears a date subsequent to that upon which it was actually signed or acknowledged by the pensioner; or

Whoever knowingly and falsely certifies that the declarant, affiant, or witness named in such declaration, affidavit, voucher, endorsement, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on section 81 of title 18, section 126 of title 38, Pensions, Bonuses, and Veterans' Relief, and section 787 of title 43, Public Lands, all of U.S.C., 1940 ed. (R.S. § 4746; July 7, 1898, ch. 578, 30 Stat. 718; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, § 2, 46 Stat. 1016).

Reference to persons aiding or assisting or causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "or bounty land", before "prosecution of any claim for pension", were omitted as obsolete. (See reviser's note under section 290 of this title.)

Upon authority of 1930 enactment words "Administrator of Veterans' Affairs" were substituted for "Commissioner of Pensions or of the Secretary of the Interior", which appeared in 1898 enactment.

The fine was changed from "$500" for "$10,000" to conform with punishment provision of section 287 of this title.

Minor changes in phraseology were also made.

CROSS REFERENCES

Administrator of Veterans' Affairs, appointment and authority, see section 210 of Title 38, Veterans' Benefits.

False statements or entries, generally, see section 1001 of this title.

§ 290. Discharge papers withheld by claim agent

Whoever, being a claim agent, attorney, or other person engaged in the collection of claims for pay, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or for any person who may have been a soldier, sailor, marine, or officer of the regular or volunteer forces of the United States, or for his dependents or beneficiaries, retains, without the consent of the owner or owners thereof, or refuses to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers of any such soldier, sailor, or marine, or commissioned officer, which may have been placed in his hands for the purpose of collecting said claims, shall be fined not more than $500 or imprisoned not more than six months, or both; and shall be debarred from prosecuting any such claim in any department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on section 100 of title 31, Money and Finance, section 130 of title 38, Pensions, Bonuses, and Veterans' Relief, and section 841 of title 43, Public Lands, all U.S.C., 1940 ed. (May 21, 1872, ch. 178, 17 Stat. 137).

Words "deemed guilty of a misdemeanor" were deleted as unnecessary. (See definition of "misdemeanor" in section 1 of this title.)

Words "and shall upon conviction, be" were omitted as surplusage since punishment can follow only after conviction.

To clarify meaning of "executive department" word "executive" before "department" was deleted and words "or agency" were inserted after it. (See definitions of "department" and "agency" in section 6 of this title.)

Words "bounty", before "pension", and "or land warrant", before "of any such soldier", were deleted as obsolete. According to regulations, Circular 1151, January 8, 1929, issued by the Secretary of the Interior and the General Land Office (see 43 CFR 131.1-131.2) "warrants for bounty lands were and are issued by the Commissioner of Pensions (Administrator of Veterans' Affairs) for services in wars or battles prior to March 3, 1855 only." Further, it is stated that "Warrants can not now be 'located' upon the public lands. The locating privilege was denied except in the state of Missouri after the passage of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. § 700), and there are no lands known to the General Land Office to be subject to warrant location in Missouri."

Words "and honorably discharged" were omitted as unnecessary and words "or for his dependents or beneficiaries" were inserted after "United States" so as to embrace an important class of persons who employ attorneys or agents in the collection of claims permitted by statute.

Minor changes of phraseology were also made.

CROSS REFERENCES

Withholding claim or benefit allowed and due, see section 3405 of Title 38, Veterans' Benefits.

§ 291. Purchase of claims for fees by court officials

Whoever, being a judge, clerk, or deputy clerk of any court of the United States or a Territory or Possession thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, magistrate, or other person holding any office or employment, or position of trust or profit under the United States, directly or indirectly purchases at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of such court, shall be fined not more than $1,000.

(June 25, 1948, ch. 645, 62 Stat. 699; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 193 (Mar. 4, 1909, ch. 321, § 104, 35 Stat. 1107).

Word "Possession" was inserted to clarify scope of section.

Minor changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner".

CROSS REFERENCES

Assignment of claims, see section 203 of Title 31, Money and Finance.

Fees, mileage, or expenses of—

Deputy marshals, see sections 571, 572 of Title 28, Judiciary and Judicial Procedure.

Jurors, see sections 1824, 1871 of Title 28.

Witnesses, see sections 1821, 1824, 1825, 1920, 1922 of Title 28.

§ 292. Solicitation of employment and receipt of unapproved fees concerning Federal employees' compensation

Whoever solicits employment for himself or another in respect to a case, claim, or award for compensation under, or to be brought under, subchapter I of chapter 81 of title 5; or

Whoever receives a fee, other consideration, or gratuity on account of legal or other services furnished in respect to a case, claim, or award for compensation under subchapter I of chapter 81 of title 5, unless the fee, consideration, or gratuity is approved by the Secretary of Labor—

Shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(b), Sept. 6, 1966, 80 Stat. 608.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 773(b) (last sentence).	Oct. 14, 1949, ch. 691, § 208 "Sec. 23(b) (last sentence)", 63 Stat. 865.

The words "under subchapter I of chapter 81 of title 5" are substituted for "under this Act" (Federal Employees' Compensation Act) to reflect the codification of the Act in title 5, United States Code.

The words "is approved by the Secretary of Labor" are substituted for "is so approved". The words "Secretary of Labor" are substituted for "Administrator" (Federal Security Administrator) on authority of 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 64 Stat. 1271.

The words "shall be guilty of a misdemeanor" are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words "and upon conviction thereof" are omitted as unnecessary because punishment can be imposed only after conviction.

The words "or both" are substituted for "or by both such fine and imprisonment".

Minor changes in phraseology are made to conform to the style of title 18.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 31-1603, 31-1623, 36-502 of the District of Columbia Code.

CHAPTER 17—COINS AND CURRENCY

Sec.
331. Mutilation, diminution, and falsification of coins.
332. Debasement of coins; alteration of official scales, or embezzlement of metals.
333. Mutilation of national bank obligations.
334. Issuance of Federal Reserve or national bank notes.
335. Circulation of obligations of expired corporations.
336. Issuance of circulating obligations of less than $1.
337. Coins as security for loans.

AMENDMENTS

1965—Pub. L. 89-81, title II, § 212(b), July 23, 1965, 79 Stat. 257, added item 337.

§ 331. Mutilation, diminution and falsification of coins

Whoever fraudulently alters, defaces, mutilates, impairs, diminishes, falsifies, scales, or lightens any of the coins coined at the mints of the United States, or any foreign coins which are by law made current or are in actual use or circulation as money within the United States; or

Whoever fraudulently possesses, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States, any such coin, knowing the same to be altered, defaced, mutilated, impaired, diminished, falsified, scaled, or lightened—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; July 16, 1951, ch. 226, § 1, 65 Stat. 121.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 279 (Mar. 4, 1909, ch. 321, § 165, 35 Stat. 1119).

Mandatory punishment provision was rephrased in the alternative.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were also made in phraseology.

AMENDMENTS

1951—Act July 16, 1951, made section applicable to minor coins (5-cent and 1-cent pieces), and to fraudulent alteration of coins.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 492 of this title.

§ 332. Debasement of coins; alteration of official scales, or embezzlement of metals

If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 280 (Mar. 4, 1909, ch. 321, § 166, 35 Stat. 1120).

Mandatory punishment provision was rephrased in the alternative.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title.

§ 333. Mutilation of national bank obligations

Whoever mutilates, cuts, defaces, disfigures, or perforates, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt issued by any national banking association, or Federal Reserve bank, or the Federal Reserve System, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued, shall be fined not more than $100 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 700.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 291 (Mar. 4, 1909, ch. 321, § 176, 35 Stat. 1122).

Words "or Federal Reserve bank, or the Federal Reserve System" were inserted because the paper of such banks has almost supplanted national bank currency.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title.

§ 334. Issuance of Federal Reserve or national bank notes

Whoever, being a Federal Reserve Agent, or an agent or employee of such Federal Reserve Agent, or of the Board of Governors of the Federal Reserve System, issues or puts in circulation any Federal Reserve notes, without complying with or in violation of the provisions of law regulating the issuance and circulation of such Federal Reserve notes; or

Whoever, being an officer acting under the provisions of chapter 2 of Title 12, countersigns or delivers to any national banking association, or to any other company or person, any circulating notes contemplated by that chapter except in strict accordance with its provisions—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700.)

HISTORICAL AND REVISION NOTES

Based on sections 581 and 592 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. §§ 5187, 5209; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

This section consolidates section 581 and part of section 592 of title 12, U.S.C., 1940 ed., Banks and Banking.

The punishment provision was drawn from said section 592 as being the latest expression of congressional intent, in preference to the provision of said section 581 which authorized a fine "not more than double the amount so countersigned and delivered and imprisonment not more than 15 years".

The words "shall be guilty of a misdemeanor" were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Likewise the words "upon conviction in any district court of the United States" were omitted as unnecessary since punishment can follow only after conviction.

(See reviser's note under section 656 of this title for statement of reasons for dividing said section 592 into three revised sections, with consequent changes in phraseology, style, and arrangement.)

CROSS REFERENCES

Offense punishable by imprisonment for term exceeding one year declared a felony, see section 1 of this title.

State banks becoming members of Federal reserve system, application to, see section 324 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 209, 324.

§ 335. Circulation of obligations of expired corporations

Whoever, being a director, officer, or agent of a corporation created by Act of Congress, the charter of which has expired, or trustee thereof, or an agent of such trustee, or a person having in his possession or under his control the property of such corporation for the purpose of paying or redeeming its notes and obligations, knowingly issues, reissues, or utters as money, or in any other way knowingly puts in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation, or by any officer thereof, or purporting to have been made under authority derived therefrom, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 289 (Mar. 4, 1909, ch. 321, § 174, 35 Stat. 1122).

The reference to persons aiding was omitted as unnecessary, since such persons are made principals by section 2 of this title.

The last sentence excepting bona fide holders in due course was omitted as surplusage.

Other changes in phraseology also were made.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title.

§ 336. Issuance of circulating obligations of less than $1

Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a less sum than $1, intended to circulate as money or to be received or used in lieu of lawful money of the United States, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 701.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 293 (Mar. 4, 1909, ch. 321, § 178, 35 Stat. 1122).

Numerous suggestions, of which that of Mr. E. M. Million, of Arlington, Va., is typical, recommend that this section be omitted as obsolete or revised to except commercial obligations. However, since the decisions make it plain that only obligations intended to circulate as money are within the provisions of this section and that commercial checks of less than $1 are not affected, there seems no reason so to rewrite the section. (See *U.S.* v. *Monongahela Bridge Co.*, Fed. Cas. No. 15,796; *Stettinius* v. *U.S.*, Fed. Cas. No. 13,387.)

Minor changes were made in phraseology.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title.

§ 337. Coins as security for loans

Whoever lends or borrows money or credit upon the security of such coins of the United

States as the Secretary of the Treasury may from time to time designate by proclamation published in the Federal Register, during any period designated in such a proclamation, shall be fined not more than $10,000 or imprisoned not more than one year or both.

(Added Pub. L. 89-81, title II, § 212(a), July 23, 1965, 79 Stat. 257.)

EFFECTIVE DATE

Section 212(c) of Pub. L. 89-81 provided that: "The amendments made by this section [adding this section] shall apply only with respect to loans made, renewed, or increased on or after the 31st day after the date of enactment of this Act [July 23, 1965]."

CHAPTER 18—CONGRESSIONAL ASSASSINATION, KIDNAPING, AND ASSAULT

Sec.
351. Congressional assassination, kidnaping, and assault; penalties.

AMENDMENTS

1971—Pub. L. 91-644, title IV, § 15, Jan. 2, 1971, 84 Stat. 1891, added chapter 18 and item 351.

§ 351. Congressional assassination, kidnaping, and assault; penalties

(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000, or imprisoned for not more than ten years, or both.

(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(Added Pub. L. 91-644, title IV, § 15, Jan. 2, 1971, 84 Stat. 1891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

CHAPTER 19—CONSPIRACY

Sec.
371. Conspiracy to commit offense or to defraud United States.
372. Conspiracy to impede or injure officer.

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, ch. 321, § 37, 35 Stat. 1096; Mar. 4, 1909, ch. 321, § 178a, as added Sept. 27, 1944, ch. 425, 58 Stat. 752).

This section consolidates said sections 88 and 294 of title 18, U.S.C., 1940 ed.

To reflect the construction placed upon said section 88 by the courts the words "or any agency thereof" were inserted. (See *Haas* v. *Henkel*, 1909, 30 S. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112, where court said: "The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government." Also, see *United States* v. *Walter*, 1923, 44 S. Ct. 10, 263 U. S. 15, 68 L. Ed. 137, and definitions of department and agency in section 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 Federal Rules Decisions, pages 380-392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said section 294 of title 18 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under section 493 of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said section 294, the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in sections 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to sections 2153 and 2154 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Civil rights, conspiracy against, see section 241 of this title.

Claims; conspiracy to obtain allowance or payment, see section 286 of this title.

Conspiracy to—

Cast away or destroy vessel, see section 2271 of this title.

Gather defense information, see section 794 of this title.

Injure property of foreign government, see section 956 of this title.

Kidnap, see section 1201 of this title.

Limitation period on conspiracy of attempting to evade or defeat any tax or the payment thereof, see section 6531 of Title 26, Internal Revenue Code of 1954.

Seditious conspiracy, see section 2384 of this title.

Wire or oral communications, authorization for interception, to provide evidence of conspiracies to commit certain offenses, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457; title 26 section 6531; title 42 section 3793.

§ 372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000 or imprisoned not more than six years, or both.

(June 25, 1948, ch. 645, 62 Stat. 701.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 54 (Mar. 4, 1909, ch. 321, § 21, 35 Stat. 1092).

Scope of section was enlarged to cover all possessions of the United States. When the section was first enacted in 1861 there were no possessions, and hence the use of the words "State or Territory" was sufficient to describe the area then subject to the jurisdiction of the United States. The word "District" was inserted by the codifiers of the 1909 Criminal Code.

CHAPTER 21—CONTEMPTS

Sec.
401. Power of court.
402. Contempts constituting crimes.

AMENDMENTS

1949—Act May 24, 1949, ch. 139, § 8(a), (b), 63 Stat. 90, struck out from caption of Chapter 21 the words "Constituting Crimes" and struck out from analysis "402. Criminal contempts." and inserted "402. Contempts constituting crimes.".

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701.)

HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

CROSS REFERENCES

Foreign witnesses, see section 1784 of Title 28, Judiciary and Judicial Procedure.

Garnishee, failure to appear at term for which summoned, as contempt, see section 2405 of Title 28.

Obstruction of justice, see section 1501 et seq. of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Prosecution of criminal contempt by summary disposition or notice and hearing, see rule 42, Appendix to this title.

Statutory provisions defining criminal contempts, see Notes of Advisory Committee on Rules, rule 42.

§ 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may,

where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

(June 25, 1948, ch. 645, 62 Stat. 701; May 24, 1949, ch. 139, § 8(c), 63 Stat. 90.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 386, 387, 389, and 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§ 1, 21, 22, 24, 38 Stat. 730, 738, 739).

Section 21 of the Clayton Act, section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, is here consolidated with parts of sections 1, 22, and 24 of the same act. Section 1 of said act, section 390a of title 28 U.S.C., 1940 ed., Judicial Code and Judiciary, defined person or persons. Section 22 of said act, section 387 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, regulated the procedure and provided for the punishment of contempts. Section 24 of said act, section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, limited the application of these sections to certain kinds of contempt.

In transferring these sections to this title and in consolidating them numerous changes of phraseology were necessary which do not, however, change their meaning or substance. Words "corporation or association" were inserted after "any person" in substitution for the definition provisions of section 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, which read as follows: "The word 'person' or 'persons' wherever used in sections 381-383, 386-390a of this title, sections 12, 13, 14-19, 20, 21, 22-27 and 44 of title 15, and section 412 of title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The words "any person, corporation, or association," unqualified except by the context of the section mean all that the more lengthy definition included. Only those persons, corporations, and associations who were parties to the order or had actual notice of it may be punished for contempt. (See *McCauly* v. *First Trust & Savings Bank*, C.C.A. Ill. 1921, 276 F. 117. See, also *National Labor Relations Board* v. *Blackstone Mfg. Co.*, C.C.A. 1941, 123 F. 2d 633.) The fact that the contemnor was incorporated or organized under a foreign law or under the laws of a particular State or Territory would hardly be relevant to the issue of criminal contempt.

As noted above these sections were part of the Clayton Act, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." Whatever doubt might have existed as to whether the contempt provisions were variously limited to antitrust cases seems to be dispelled by the case of *Sandefur* v. *Canoe Creek Coal Co.* (C.C.A. Ky. 1923, 293 F. 379, certified question answered 45 S. Ct. 18, 266 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451), where the court says: "The act, considered as a whole, covers several more or less distinct subjects. * * * The first eight sections pertain directly to the subject of trust and monopolies; section 9 concerns interstate commerce; section 10, combinations among common carriers; section 11, proceedings to enforce certain provisions of the act; sections 12-16, antitrust procedure and remedies; sections 17-19, regulations of injunction and restraining orders in all cases; section 20 limits the power of an equity court to issue any injunction in a certain class of cases, viz., between employer and the employee; and sections 21-24 pertain to procedure in any district court, punishing contemptuous disregard of any order of such court, providing the act constituting contempt is also a criminal offense. Observing this relation of the various parts of the act to each other, we think 'within the purview of this act' must refer to that portion of the act which most broadly covers the subject-matter to which section 22 is devoted, and this portion is section 21, which reaches all cases where the act of contempt is also a criminal offense. We know of nothing in the legislative history of the act, or within the common knowledge as to the then existing situation, which justifies us in thinking that 'within the purview of this act,' in section 22, meant to limit its effect to the employer-employee provisions of section 20, or even to the antitrust scope of some of the earlier sections." (See also *Michaelson* v. *United States*, 1924, 45 S. Ct. 18, 166 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451, and H. Rept. No. 613, 62d Cong., 2d sess., to accompany H.R. 15657.)

1949 ACT

This amendment [see section 8] corrects the catch line of section 402 of title 18, U.S.C., to better represent the section content.

AMENDMENTS

1949—Act May 24, 1949, changed catchline from "Criminal contempts" to its present reading.

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011 to 1015 of Title 15, Commerce and Trade.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 of Title 49, Transportation.

Limitation of proceedings, see section 3285 of this title.

Witness' failure to appear before foreign court to answer interrogatories of United States courts made contempt, see section 1784 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt procedure, see rule 42, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3285 of this title; title 21 section 332.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 11-741, 11-944 of the District of Columbia Code.

CHAPTER 23—CONTRACTS

Sec.
431. Contracts by Member of Congress.
432. Officer or employee contracting with Member of Congress.
433. Exemptions with respect to certain contracts.
434.[1] Interested persons acting as Government agents.
435. Contracts in excess of specific appropriation.
436. Convict labor contracts.

[1] Section repealed without amending analysis to reflect such repeal.

Sec.
437. Indian contracts for goods and supplies.
438. Indian contracts for services generally.
439. Indian enrollment contracts.
440. Mail contracts.
441. Postal supply contracts.
442. Printing contracts.
443. War contracts.

AMENDMENTS

1951—Act Oct. 31, 1951, ch. 655, § 18, 65 Stat. 717, struck out "; exceptions" from item 431.

§ 431. Contracts by Member of Congress

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in whole or in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined not more than $3,000.

All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States or any agency thereof, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department or agency under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties for the recovery of the money so advanced.

(June 25, 1948, ch. 645, 62 Stat. 702; Oct. 31, 1951, ch. 655, § 19, 65 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 204 (Mar. 4, 1909, ch. 321, § 114, 35 Stat. 1109).

Word "agency" was inserted in three places to eliminate any ambiguity as to scope of section. (See definition of department or agency under section 6 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1951—Act Oct. 31, 1951, struck out "; exceptions", following "Congress" in catchline of section.

CROSS REFERENCES

Contracts not affected by this section, see section 433 of this title.

Counterfeiting and forgery of contracts, see section 495 of this title.

Interest in contracts with government prohibited, see section 22 of Title 41, Public Contracts.

Loans or payments made under Agricultural Adjustment Act of 1938 as not affected by this section, see section 1386 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of this title; title 7 section 1386; title 12 section 209; title 15 section 714m; title 22 section 2676.

§ 432. Officer or employee contracting with Member of Congress

Whoever, being an officer or employee of the United States, on behalf of the United States or any agency thereof, directly or indirectly makes or enters into any contract, bargain, or agreement, with any Member of or Delegate to Congress, or any Resident Commissioner, either before or after he has qualified, shall be fined not more than $3,000.

(June 25, 1948, ch. 645, 62 Stat. 702.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 205 (Mar. 4, 1909, ch. 321, § 115, 35 Stat. 1109).

Words "agency" and "employee" were inserted to eliminate any ambiguity as to scope of section. (See definition of agency under section 6 of this title.)

Changes were made in phraseology.

CROSS REFERENCES

Contracts not affected by this section, see section 433 of this title.

Loans or payments made under Agricultural Adjustment Act of 1938 as not affected by this section, see section 1386 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of this title; title 7 section 1386; title 12 section 209; title 15 section 714m.

§ 433. Exemptions with respect to certain contracts

Sections 431 and 432 of this title shall not extend to any contract or agreement made or entered into, or accepted by any incorporated company for the general benefit of such corporation; nor to the purchase or sale of bills of exchange or other property where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to advances, loans, discounts, purchase or repurchase agreements, extensions, or renewals thereof, or acceptances, releases or substitutions of security therefor or other contracts or agreements made or entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

Any exemption permitted by this section shall be made a matter of public record.

(June 25, 1948, ch. 645, 62 Stat. 703; Oct. 4, 1961, Pub. L. 87-353, § 3(*o*), 75 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on section 1514(f) of title 7, U.S.C., 1940 ed., Agriculture; sections 264w, 598, 1138d(e), 1441(e), 1467(d) of title 12, U.S.C., 1940 ed., Banks and Banking; section 616(e) of title 15, U.S.C., 1940 ed., Commerce and Trade; title 18, U.S.C., 1940 ed., § 206 (Mar. 4, 1909, ch. 321, § 116, 35 Stat. 1109; Dec. 23, 1913, ch. 6, § 22(j), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Jan. 22, 1932, ch. 8, § 16(e), 47 Stat. 12; July 22, 1932, ch. 522, § 21, 47 Stat. 738; June 13, 1933, ch. 64, § 8, 48 Stat. 135; June 16, 1933, ch. 98, § 64, 48 Stat. 268, 269; Jan. 25, 1934, ch. 5, 48 Stat. 337; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 27, 1934, ch. 847, title V, § 510, 58 Stat. 1264; May 28, 1935, ch. 150, §§ 20, 21, 49 Stat. 298; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 703; Aug. 26, 1937, ch. 821, 50 Stat. 838; Feb. 16, 1938, ch. 30, title V, § 514, 52 Stat. 77).

These sections were consolidated with such changes of phraseology as were necessary to effect consolida-

tion. Said section 206 of title 18, U.S.C., 1940 ed., was the principal source of this section, but the enumeration of the kinds of commitments exempted was drawn from the various sections of said title 12 set forth above. The reference to crop insurance agreements is drawn from section 1514(f) of Title 7, Agriculture.

The applicability provisions of the sections here consolidated were unclear and of doubtful value. As revised the section preserves everything of value without change of substance.

References to the Bankhead-Jones Farm Tenant Act and the Farmers' Home Administrative Act of 1946 were included in this revised section notwithstanding the omission (and consequent repeal) of former subsection (d) of section 52 of the said Bankhead-Jones Act (1937) (Title 7, U.S.C., 1940 ed., § 1026) in the amendment of said section 52 of such Act by section 3 of the said Farmers' Home Administration Act of 1946 (August 14, 1946, ch. 964, 60 Stat. 1062). The essential nature of the transactions under the several acts would render inconsistent any attempt to include some and exclude others.

REFERENCES IN TEXT

The Reconstruction Finance Corporation Act, referred to in text, is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, which was formerly classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and which has now been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables volume.

The Agricultural Adjustment Act, referred to in text, is title I of act May 12, 1933, ch. 25, 48 Stat. 31, which is classified generally to chapter 26 (§ 601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables volume.

The Federal Farm Loan Act, referred to in text, is act July 17, 1916, ch. 245, 39 Stat. 360, as amended, and was classified principally to sections 641 et seq. of Title 12, Banks and Banking. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables volume.

The Emergency Farm Mortgage Act of 1933, referred to in text, is title II of act May 12, 1933, ch. 25, 48 Stat. 31. Such title II was substantially repealed by act June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208; act Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400; act Oct. 4, 1961, Pub. L. 87-353, § 3(a), (b), (w), 75 Stat. 773, 774; act Dec. 10, 1971, Pub. L. 92-181, Title V, § 5.26(a), 85 Stat. 624. For complete classification of this Act to the Code, see Tables volume.

The Farm Credit Act of 1933, referred to in text, is act June 16, 1933, ch. 98, 48 Stat. 2, as amended, and was classified principally to subchapter IV (§ 1131 et seq.) of chapter 7 of Title 12, Banks and Banking. The Farm Credit Act of 1933, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes under section 2001 of Title 12. For complete classification of the Farm Credit Act of 1933 to the Code prior to such repeal, see Tables volume.

The Home Owners Loan Act of 1933, referred to in text, is act June 13, 1933, ch. 64, 48 Stat. 128, which is classified generally to chapter 12 (§ 1461 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1461 of Title 12 and Tables volume.

The Farmers' Home Administration Act of 1946, referred to in text, is act Aug. 14, 1946, ch. 964, 60 Stat. 1062. Such Act was substantially repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and act Aug. 8, 1961, Pub. L. 87-128, title III, § 341(a), 75 Stat. 318. For complete classification of this Act to the Code, see Tables volume.

The Bankhead-Jones Farm Tenant Act, referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables volume.

AMENDMENTS

1961—Pub. L. 87-353 struck out "the Federal Farm Mortgage Corporation Act," following "the Emergency Farm Mortgage Act of 1933,".

ABOLITION OF HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation, which was created by the Home Owners' Loan Act of 1933, referred to in this section, was dissolved and abolished by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, set out in note under section 1463 of Title 12, Banks and Banking.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

The Reconstruction Finance Corporation, which was created by the Reconstruction Finance Corporation Act, referred to in this section, was abolished by section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Exemptions from requirement of express conditions in contracts involving interest of Member of Congress, see section 22 of Title 41, Public Contracts.

Financial control of government corporations, see section 841 et seq. of Title 31, Money and Finance.

Secret Service, detection and arrest of violators, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 12 section 209.

[§ 434. Repealed. Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, act June 25, 1948, ch. 645, 62 Stat. 703, related to interested persons acting as Government agents, and is supplanted by section 208 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

EXEMPTIONS

Exemptions from the provisions of this section heretofore created or authorized by statute which are in force on the effective date of the repeal of this section deemed to be exemptions from section 208 of this title except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable, see section 2 of Pub. L. 87-849.

§ 435. Contracts in excess of specific appropriation

Whoever, being an officer or employee of the United States, knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropri-

ated for such purpose, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 703.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 184 (Mar. 4, 1909, ch. 321, § 98, 35 Stat. 1106).

Words "or employee" were inserted to remove any ambiguity as to scope of section.

The offense described in this section involves no moral turpitude, and therefore the punishment provisions were reduced from $2,000 to $1,000 and from 2 years to 1 year, so that the stigma of a felony would not attach to an offender. (See classification of felony and misdemeanor in section 1 of this title and note thereunder.)

Mandatory punishment provisions were rephrased in the alternative.

Changes were also made in phraseology.

CROSS REFERENCES

Appropriations as limiting contracts, see sections 11, 12 of Title 41, Public Contracts.

Construction of appropriation acts, see section 627 of Title 31, Money and Finance.

Removal from office and punishment by fine or imprisonment for expenditures in excess of appropriations, see section 665 of Title 31.

§ 436. Convict labor contracts

Whoever, being an officer, employee, or agent of the United States or any department or agency thereof, contracts with any person or corporation, or permits any warden, agent, or official of any penal or correctional institution, to hire out the labor of any prisoners confined for violation of any laws of the United States, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 703.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 708, 709 (Feb. 23, 1887, ch. 213, §§ 1, 2, 24 Stat. 411).

This section consolidates sections 708 and 709 of title 18, U.S.C., 1940 ed., as the offense and penalty provisions, respectively.

Words "department or agency thereof" were inserted to clarify scope of section. See definition of department and agency in section 6 of this title.

To retain uniformity words "shall be deemed guilty of a misdemeanor, and," were omitted. The reference to misdemeanor is now covered by the definition in section 1 of this title.

Words "on conviction thereof" were omitted as unnecessary since punishment can follow only upon conviction.

The minimum punishment provisions "less than one year nor" and "less than $500 nor" were deleted to conform to the policy followed by codifiers of 1909 Criminal Code. (See reviser's note under section 203 of this title.)

Changes were also made in phraseology.

CROSS REFERENCES

Employment of Federal prisoners in State institutions, see section 4002 of this title.

Employment of prisoners confined in government prisons, see sections 4121 to 4128 of this title.

§ 437. Indian contracts for goods and supplies

Whoever, being an officer, employee, or agent of the United States or any department or agency thereof, has any interest, direct or indirect, in any contract made or under negotiation, with the Government or with the Indians, for the purchase or transportation or delivery of goods or supplies for the Indians, or for the removal of the Indians, or colludes with any person attempting to obtain such contract, shall be fined not more than $5,000 or imprisoned not more than six months, or both; and removed from office.

(June 25, 1948, ch. 645, 62 Stat. 703.)

HISTORICAL AND REVISION NOTES

Based on section 87 of title 25, U.S.C., 1940 ed., Indians (June 22, 1874, ch. 389, § 10, 18 Stat. 177).

To clarify scope of section words "department or agency" were substituted for "of the departments". (See definitions of department and agency in section 6 of this title.)

Word "officer" was inserted to remove all ambiguity as to scope of section.

Words "The violation of any of the provisions of this section shall be a misdemeanor, and" were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

The minimum fine clause "less than $500 nor" was omitted to conform to policy followed by codifiers of 1909 Criminal Code.

Changes in phraseology were also made.

CROSS REFERENCES

Agreements with Indians, see section 71 et seq. of Title 25, Indians.

Indian employees of Government, entitlement to Indian benefits, see section 441 of Title 25, Indians.

Purchase from Indians under rules and regulations prescribed by Secretary of Interior, see sections 68a, 87a of Title 25.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 441.

§ 438. Indian contracts for services generally

Whoever receives money contrary to sections 81 and 82 of Title 25, shall be fined not more than $1,000 or imprisoned not more than six months, or both; and also forfeit the money so received.

(June 25, 1948, ch. 645, 62 Stat. 703.)

HISTORICAL AND REVISION NOTES

Based on section 83 of title 25, U.S.C., 1940 ed., Indians (R.S. § 2105).

The reference to persons aiding and abetting was omitted as unnecessary. Such persons are made principals by section 2 of this title.

Punishment by imprisonment "for not less than six months" and fine of "not less than $1,000," was susceptible of no other meaning than that minimum punishment was mandatory. This has been rephrased to provide a flexible punishment within the former mandatory limits.

Words "Indian agents" were omitted as such agents have not existed since 1908. (See 25 U.S.C., §§ 32, 64, and notes thereunder.)

Sentence providing "And it shall be the duty of all district attorneys to prosecute such cases when applied to do so, and their failure and refusal shall be ground for their removal from office." was omitted because any misfeasance of office on the part of a United States district attorney is ground for his removal.

Provision of disqualification of office for violators of this section was omitted as incongruous with the small penalty and fine provisions.

Minor changes were made in phraseology.

CROSS REFERENCES

Agreements with Indians, see section 71 et seq. of Title 25, Indians.

§ 439. Indian enrollment contracts

Unless the United States consents, all contracts made with any person or persons, applicants for enrollment as citizens in the Five Civilized Tribes for compensation for services in relation thereto, shall be void, and—

Whoever collects or receives any moneys from any such applicants for citizenship, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 704.)

HISTORICAL AND REVISION NOTES

Based on section 86 (part) of title 25, U.S.C., 1940 ed., Indians (Aug. 1, 1914, ch. 222, § 17, 38 Stat. 601).

Only that part of said section 86 which requires the consent of the United States to enrollment contracts was incorporated in this section.

Minor changes were made in phraseology.

CROSS REFERENCES

Agreements with Indians, see section 71 et seq. of Title 25, Indians.

§ 440. Mail contracts

Whoever, being a person employed in the Postal Service, becomes interested in any contract for carrying the mail, or acts as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 704; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(3), 84 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 356 (Mar. 4, 1909, ch. 321, § 226, 35 Stat. 1134).

Provision for dismissal from office was omitted since this might be handled better administratively.

Changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department" preceding "shall be fined".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Employment of postal employees in dual capacity, see section 1001 of Title 39, Postal Service.

§ 441. Postal supply contracts

No contract for furnishing supplies to the Postal Service shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for furnishing such supplies, or to fix a price or prices therefor, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract, or to bid at a specified price or prices thereon.

Whoever violates this section shall be fined not more than $5,000 or imprisoned not more than one year, or both; and if the offender is a contractor for furnishing such supplies his contract may be annulled.

(June 25, 1948, ch. 645, 62 Stat. 704; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(4), 84 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on section 808 of title 39, U.S.C., 1940 ed., The Postal Service (Aug. 24, 1912, ch. 389, § 2, 37 Stat. 553).

Minimum punishment provisions "less than $100 nor" and "less than three months nor" were omitted to conform to policy followed by codifiers of 1909 Criminal Code.

Changes in phraseology were also made.

AMENDMENTS

1970—Pub. L. 91-375 struck out "Post Office Department or the" preceding "Postal Service".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 442. Printing contracts

Neither the Public Printer, superintendent of printing, superintendent of binding, nor any of their assistants shall, during their continuance in office, have any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving.

Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 704.)

HISTORICAL AND REVISION NOTES

Based on section 53 of title 44, U.S.C., 1940 ed., Public Printing and Documents (Jan. 12, 1895, ch. 23, § 34, 28 Stat. 605).

Words "on conviction before any court of competent jurisdiction" were omitted as unnecessary, since punishment cannot be imposed until there has been a conviction before a competent tribunal.

Words "in the penitentiary" were omitted as surplusage as section 4082 of this title commits all prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

The minimum punishment provision "for a term of not less than one nor" was omitted in keeping with policy of codifiers of 1909 Criminal Code.

Mandatory punishment provision was rephrased in the alternative.

The offense described in this section involves no moral turpitude, and therefore the punishment provisions were reduced from 5 years to 1 year, so that the stigma of a felony would not attach to an offender. The fine was increased from $500 to $1,000 as more proportionate to the 1-year term of imprisonment. (See classification of felony and misdemeanor in section 1 of this title and note thereunder.)

§ 443. War contracts

Whoever willfully secretes, mutilates, obliterates, or destroys—

(a) any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancellation or other termination, or settlement of a war contract of $25,000 or more; or

(b) any records of a war contractor or purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any government agency is $5,000 or more, before the lapse of (1) five years after such disposition of termination inventory by such war contractor or government agency, or (2) five years after the final settlement of such war contract, or (3) five years after 12 o'clock noon of December 31, 1946, whichever applicable period is longer, shall, if a corporation, be fined not more than $50,000, and, if a natural person, be fined not more than $10,000 or imprisoned not more than five years, or both.

The Administrator of General Services, by regulation, may authorize the destruction of such records upon such terms and conditions as he deems appropriate, including the requirement for the making and retaining of photographs or microphotographs, which shall have the same force and effect as the originals thereof.

The definitions of terms in section 103 of Title 41 shall apply to similar terms used in this section.

(June 25, 1948, ch. 645, 62 Stat. 705; Oct. 31, 1951, ch. 655, § 20(a), 65 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on section 119, first and second paragraphs, of title 41 U.S.C., 1940 ed., Public Contracts (July 1, 1944, ch. 358, § 19(a), 58 Stat. 667).

Section was rewritten with changes of phraseology to conform to the style adopted in the revision.

The definition of "records" was omitted as surplusage in order to avoid any inference that "records" as used in other sections was intended to have a different or more limited connotation than the broad and commonly understood meaning popularly assigned to the term.

The last paragraph was added to obviate any possibility of doubt as to meaning of terms defined in section 103 of Title 41, Public Contracts.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

AMENDMENTS

1951—Act Oct. 31, 1951, substituted "12 o'clock noon of December 31, 1946" for "the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress", and, in the next-to-last paragraph, substituted "Administrator of General Services" for "Director of Contract Settlement".

TRANSFER OF FUNCTIONS

The functions of the Director of Contract Settlement transferred to the Secretary of the Treasury by Ex. Ord. No. 9809, § 8, Dec. 12, 1946, 11 F.R. 14281, and Reorg. Plan No. 1 of 1947, § 201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951 and to the Administrator of General Services by act June 30, 1949, ch. 288, title I, § 102(b), 63 Stat. 380.

TERMINATION OF HOSTILITIES

The termination of hostilities of World War II, for purpose of determining the period during which records must be preserved under former section 119 of Title 41, Public Contracts, was proclaimed at 12 o'clock noon of Dec. 31, 1946, by Proc. No. 2714, 12 F.R. 1, set out as note under section 601 of Appendix to Title 50, War and National Defense.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

Suspension of limitation of prosecution, see section 3287 of this title.

CHAPTER 25—COUNTERFEITING AND FORGERY

Sec.
471. Obligations or securities of United States.
472. Uttering counterfeit obligations or securities.
473. Dealing in counterfeit obligations or securities.
474. Plates or stones for counterfeiting obligations or securities.
475. Imitating obligations or securities; advertisements.
476. Taking impressions of tools used for obligations or securities.
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478. Foreign obligations or securities.
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484. Connecting parts of different notes.
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491. Tokens used as money or similar to coins.[1]
492. Forfeiture of counterfeit paraphernalia.
493. Bonds and obligations of certain lending agencies.
494. Contractors' bonds, bids, and public records.
495. Contracts, deeds, and powers of attorney.
496. Customs entry certificates.[2]
497. Letters patent.
498. Military or naval discharge certificates.
499. Military, naval, or official passes.
500. Money orders.
501. Postage stamps and postal cards.[1]
502. Postage and revenue stamps of foreign governments.
503. Postmarking stamps.
504. Printing and filming of United States and foreign obligations and securities.
505. Seals of courts; signatures of judges or court officers.
506. Seals of departments or agencies.
507. Ship's papers.
508. Transportation requests of Government.
509. Possessing and making plates or stones for Government transportation requests.

[1] Section catchline amended without amending analysis.

[2] So in original. Section catchline reads "Customs Matters".

AMENDMENTS

1965—Pub. L. 89-81, title II, § 211(b), July 23, 1965, 79 Stat. 257, struck out "Gold or silver" preceding "Coins or bars" in item 485.

1958—Pub. L. 85-921, § 2, Sept. 2, 1958, 72 Stat. 1771, substituted "Printing and filming of United States and foreign obligations and securities" for "Printing stamps for philatelic purposes" in item 504.

1951—Act July 16, 1951, ch. 226, § 5(c), 65 Stat. 122, struck out "; publisher's illustrations excepted" from item 489.

CROSS REFERENCES

Certificate, license or document issued to vessels, officers or seamen, counterfeiting or forging, see section 2197 of this title.

Claims against the United States, use of counterfeited or forged power of attorney, authority or instrument, see section 1003 of this title.

Embezzlement or carrying away tools and materials for counterfeiting, see section 642 of this title.

Extradition of fugitives from country under control of United States, see section 3185 of this title.

Federal Housing Administration, counterfeiting or forging instruments for purpose of influencing action, see section 1010 of this title.

Federal Savings and Loan Insurance Corporation, counterfeiting or forging instruments for purpose of influencing action, see section 1008 of this title.

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

Indian Arts and Crafts Board trade-mark, counterfeiting, see section 1158 of this title.

Mail fraud involving counterfeit articles, see section 1341 of this title.

Mail keys, counterfeiting or forging, see section 1704 of this title.

Naturalization or citizenship papers, counterfeiting or forging, see section 1426 of this title.

Passports, counterfeiting or forging, see section 1543 of this title.

Postal savings, counterfeiting and forgery laws as applicable, see section 1691 of this title.

Sale or receipt of counterfeited or forged securities or tools used in counterfeiting or forging securities, see section 2315 of this title.

Transportation of counterfeited or forged securities or tools used in counterfeiting or forging securities, see section 2314 of this title.

Visas and permits, counterfeiting or forging, see section 1546 of this title.

Weather reports, issuing counterfeit weather forecast or warning, see section 2074 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 78o, 80b-3.

§ 471. Obligations or securities of United States

Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 262 (Mar. 4, 1909, ch. 321, § 148, 35 Stat. 1115).

Mandatory punishment provision was rephrased in the alternative.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Obligation or other security of the United States defined, see section 8 of this title.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961, 2516 of this title; title 12 section 1457.

§ 472. Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 265 (Mar. 4, 1909, ch. 321, § 151, 35 Stat. 1116).

Mandatory punishment provision was rephrased in the alternative.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Obligation or other security of the United States defined, see section 8 of this title.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961, 2516 of this title; title 12 section 1457.

§ 473. Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 268 (Mar. 4, 1909, ch. 321, § 154, 35 Stat. 1117).

Reference to circulating notes of banking associations was omitted as covered by definition of obligation or other security in section 8 of this title.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961, 2516 of this title; title 12 section 1457.

§ 474. Plates or stones for counterfeiting obligations or securities

Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, uses such plate, stone, or other things, or any part thereof, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or

Whoever makes or executes any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or

Whoever sells any such plate, stone, or other thing, or brings into the United States any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or

Whoever has in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or

Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or

Whoever prints, photographs, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States, or brings into the United States, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or

Whoever has or retains in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 706.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 264 (Mar. 4, 1909, ch. 321, § 150, 35 Stat. 1116).

References to persons causing, procuring, assisting or aiding were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Philatelic reproductions permitted, see section 504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 475. Imitating obligations or securities; advertisements

Whoever designs, engraves, prints, makes, or executes, or utters, issues, distributes, circulates, or uses any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any obligation or security of the United States issued under or authorized by any Act of Congress or writes, prints, or otherwise impresses upon or attaches to any such instrument, obligation, or security, or any coin of the United States, any business or professional card, notice, or advertisement, or any notice or advertisement whatever, shall be fined not more than $500.

(June 25, 1948, ch. 645, 62 Stat. 706; July 16, 1951, ch. 226, § 2, 65 Stat. 122.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 292 (Mar. 4, 1909, ch. 321, § 177, 35 Stat. 1122).

Enumeration of obligations of the United States was omitted in view of definition in section 8 of this title.

Changes in phraseology were also made.

AMENDMENTS

1951—Act July 16, 1951, prohibited the use of notices or advertising prints or labels on United States coins.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 476. Taking impressions of tools used for obligations or securities

Whoever, without authority from the United States, takes, procures, or makes an impression, stamp, or imprint of, from or by the use of any tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 266 (Mar. 4, 1909, ch. 321, § 152, 35 Stat. 1117).

Enumeration of substances on which impressions could be made and enumeration of various kinds of tools to be used were omitted as unnecessary.

Reference to circulating note or evidence of debt was omitted in view of definition of obligations and securities in section 8 of this title.

Changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Possession of impressions of tools used for obligations or securities, punishment, see section 477 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 477 of this title; title 12 section 1457.

§ 477. Possessing or selling impressions of tools used for obligations or securities

Whoever, with intent to defraud, possesses, keeps, safeguards, or controls, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument or thing, used, fitted or intended to be used, for any of the purposes mentioned in section 476 of this title; or

Whoever, with intent to defraud, sells, gives, or delivers any such imprint, stamp, or impression to any other person—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 267 (Mar. 4, 1909, ch. 321, § 153, 35 Stat. 1117).

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 478. Foreign obligations or securities

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 270 (Mar. 4, 1909, ch. 321, § 156, 35 Stat. 1117).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were also made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Foreign government defined, see section 11 of this title.

Uttering counterfeit foreign obligations or securities, see section 479 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 479 of this title.

§ 479. Uttering counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 478 of this title, whether or not the same was made, altered, forged, or counterfeited within the United States, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 271 (Mar. 4, 1909, ch. 321, § 157, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 480. Possessing counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, possesses or delivers any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 274 (Mar. 4, 1909, ch. 321, § 160, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were also made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 481. Plates or stones for counterfeiting foreign obligations or securities

Whoever, within the United States except by lawful authority, controls, holds, or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or uses such plate, stone, or other thing, or knowingly permits or suffers the same to be used in counterfeiting such foreign obligations, or any part thereof; or

Whoever, except by lawful authority, makes or engraves any plate, stone, or other thing in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or

Whoever, except by lawful authority, prints, photographs, or makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or

Whoever brings into the United States any counterfeit plate, stone, or other thing, engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 275 (Mar. 4, 1909, ch. 321, § 161, 35 Stat. 1118).

References to persons causing, procuring, assisting or aiding were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Philatelic reproductions permitted, see section 504 of this title.

Section Referred to in Other Sections

This section is referred to in section 14 of this title.

§ 482. Foreign bank notes

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 272 (Mar. 4, 1909, ch. 321, § 158, 35 Stat. 1118).

Reference to persons causing, procuring, aiding and assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Uttering counterfeit foreign bank notes, see section 483 of this title.

Section Referred to in Other Sections

This section is referred to in sections 14, 483 of this title.

§ 483. Uttering counterfeit foreign bank notes

Whoever, within the United States, utters, passes, puts off, or tenders in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, mentioned in section 482 of this title, knowing the same to be so false, forged, altered, and counterfeited, whether or not the same was made, forged, altered, or counterfeited within the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 708.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 273 (Mar. 4, 1909, ch. 321, § 159, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Section Referred to in Other Sections

This section is referred to in section 14 of this title.

§ 484. Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 276 (Mar. 4, 1909, ch. 321, § 162, 35 Stat. 1119).

Minor changes in phraseology were made.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Section Referred to in Other Sections

This section is referred to in section 14 of this title.

§ 485. Coins or bars

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; July 23, 1965, Pub. L. 89-81, title II, § 211(a), 79 Stat. 257.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 277 (Mar. 4, 1909, ch. 321, § 163, 35 Stat. 1119).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

The provision for imprisonment for 10 years was changed to 15 years to conform to sections 471 and 472 of this title.

Changes were made in phraseology.

AMENDMENTS

1965—Pub. L. 89-81 removed "Gold or silver" preceding "Coins or bars" in the section catchline, changed the description of the United States coins covered in the first par. from gold or silver coins to any coin of a denomination higher than 5 cents, and made minor structural changes in the second par.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Coins and currency generally, see sections 331 to 336 of this title and sections 251 et seq. and 451 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 486. Uttering coins of gold, silver or other metal

Whoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than $3,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 281 (Mar. 4, 1909, ch. 321, § 167, 35 Stat. 1120).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 487. Making or possessing counterfeit dies for coins

Whoever, without lawful authority, makes any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins coined at the mints of the United States; or

Whoever, without lawful authority, possesses any such die, hub, or mold, or any part thereof, or permits the same to be used for or in aid of the counterfeiting of any such coins of the United States—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 283 (Mar. 4, 1909, ch. 321, § 169, 35 Stat. 1120).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

The provision for imprisonment for 10 years was changed to 15 years to conform to section 471 of this title.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 488. Making or possessing counterfeit dies for foreign coins

Whoever, within the United States, without lawful authority, makes any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or

Whoever, without lawful authority, possesses any such die, hub, or mold, or any part thereof, or conceals, or knowingly suffers the same to be used for the counterfeiting of any foreign coin—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 284 (Mar. 4, 1909, ch. 321, § 170, 35 Stat. 1120).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Provision for $2,000 fine was increased to $5,000 to conform with section 481 of this title.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 489. Making or possessing likeness of coins

Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government shall be fined not more than $100.

(June 25, 1948, ch. 645, 62 Stat. 709; July 16, 1951, ch. 226, § 3, 65 Stat. 122.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 285 (Mar. 4, 1909, ch. 321, § 171, 35 Stat. 1121; Feb. 15, 1912, ch. 38, 37 Stat. 64).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1951—Act July 16, 1951, struck out of catchline "publisher's illustrations excepted", deleted from text all language which could be interpreted to prohibit or restrict the making and printing of coin illustrations in magazines and other publications, and gave the Secretary of the Treasury the authority to make exceptions to the application of this section.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 490. Minor coins

Whoever falsely makes, forges, or counterfeits any coin in the resemblance or similitude of any of the minor coins coined at the mints of the United States; or

Whoever passes, utters, publishes, or sells, or brings into the United States, or possesses any such false, forged, or counterfeited coin, with intent to defraud any person, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 278 (Mar. 4, 1909, ch. 321, § 164, 35 Stat. 1119).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Definition of minor coins, see section 317 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 491. Tokens or paper used as money

(a) Whoever, being 18 years of age or over, not lawfully authorized, makes, issues, or passes any coin, card, token, or device in metal, or its compounds, intended to be used as money, or whoever, being 18 years of age or over, with intent to defraud, makes, utters, inserts, or uses any card, token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States or any coin or other currency not legal tender in the United States, to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(b) Whoever manufactures, sells, offers, or advertises for sale, or exposes or keeps with intent to furnish or sell any token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States, or any token, disk, paper, or other device issued or authorized in connection with rationing or food and fiber distribution by any agency of the United States, with knowledge or reason to believe that such tokens, slugs, disks, devices, papers, or other things are intended to be used unlawfully or fraudulently to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter, or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Nothing contained in this section shall create immunity from criminal prosecution under the laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(c) "Knowledge or reason to believe", within the meaning of paragraph (b) of this section, may be shown by proof that any law-enforcement officer has, prior to the commission of the offense with which the defendant is charged, informed the defendant that tokens, slugs,

disks, or other devices of the kind manufactured, sold, offered, or advertised for sale by him or exposed or kept with intent to furnish or sell, are being used unlawfully or fraudulently to operate certain specified automatic merchandise vending machines, postage-stamp machines, turnstiles, fare boxes, coin-box telephones, parking meters, or other receptacles, depositories, or contrivances, designed to receive or to be operated by lawful coins of the United States.

(June 25, 1948, ch. 645, 62 Stat. 710; Sept. 19, 1962, Pub. L. 87-667, 76 Stat. 555.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 282, 282a (Mar. 4, 1909, ch. 321, § 168, 35 Stat. 1120, and § 168a as added Apr. 1, 1944, ch. 151, 58 Stat. 149).

Mandatory punishment provision in subsection (a) was rephrased in the alternative.

Sections were consolidated and changes were made in phraseology.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Punishment provision in paragraph (a) of 5 years was changed to 1 year to make the offense a misdemeanor as was done in paragraph (b) of this section, which represents the latest expression of the intention of Congress. See definition of felony and misdemeanor in section 1 of this title and note thereunder.

In paragraph (b) the $3,000 fine was reduced to $1,000 to conform to paragraph (a) and as more in keeping with the gravity of offense.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-667 inserted "being 18 years of age or over," preceding "not lawfully authorized", and "or whoever, being 18 years of age or over, with intent to defraud, makes, utters, inserts, or uses any card, token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States or any coin or other currency not legal tender in the United States, to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States," and deleted "for any 1-cent, 2-cent, 3-cent, or 5-cent piece, authorized by law, or for coins of equal value" which followed "intended to be used as money".

Subsec. (b). Pub. L. 87-667 substituted "device, paper, or other thing similar" for "device similar", "paper, or other device issued or authorized in connection with rationing or food and fiber distribution" for "or other device issued or authorized in connection with rationing", and "devices, papers, or other things are intended to be used unlawfully" for "or other devices may be used unlawfully", inserted "or other currency" preceding "of the United States" in two places, and "lawful" preceding "receptacle, depository", and provided that nothing in this section shall create immunity from criminal prosecution under the laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 492. Forfeiture of counterfeit paraphernalia

All counterfeits of any coins or obligations or other securities of the United States or of any foreign government, or any articles, devices, and other things made, possessed, or used in violation of this chapter or of sections 331-333, 335, 336, 642 or 1720, of this title, or any material or apparatus used or fitted or intended to be used, in the making of such counterfeits, articles, devices or things, found in the possession of any person without authority from the Secretary of the Treasury or other proper officer, shall be forfeited to the United States.

Whoever, having the custody or control of any such counterfeits, material, apparatus, articles, devices, or other things, fails or refuses to surrender possession thereof upon request by any authorized agent of the Treasury Department, or other proper officer, shall be fined not more than $100 or imprisoned not more than one year, or both.

Whenever, except as hereinafter in this section provided, any person interested in any article, device, or other thing, or material or apparatus seized under this section files with the Secretary of the Treasury, before the disposition thereof, a petition for the remission or mitigation of such forfeiture, the Secretary of the Treasury, if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or the mitigation of such forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just.

If the seizure involves offenses other than offenses against the coinage, currency, obligations or securities of the United States or any foreign government, the petition for the remission or mitigation of forfeiture shall be referred to the Attorney General, who may remit or mitigate the forfeiture upon such terms as he deems reasonable and just.

(June 25, 1948, ch. 645, 62 Stat. 710.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 286 (Mar. 4, 1909, ch. 321, § 172, 35 Stat. 1121; Jan. 27, 1938, ch. 10, § 4, 52 Stat. 7).

Section was materially shortened through merger of former third and fourth sentences with present first and second paragraphs by extending latter to include "articles, devices, and other things". This necessitated many insertions and deletions in the first two paragraphs, which, however, did not affect the substance of the section.

A reference in the former third sentence to violations of certain sections was broadened to read "in violation of this chapter or of sections 331-333, 335-336, 642, 1720, of this title" and incorporated in the first paragraph. This translation extends for the first time the provisions of this section to subject matter of sections 493-496, 498, 499, 504-509 of this title. All of the sections covered by the original reference in this section are represented in the translation except section 261, now section 8 of this title, and section 287 of title 18, U.S.C., 1940 ed., which were omitted therefrom as unnecessary, since the former is definitive and the latter related to procedure only, and is superseded by rule 41(a), (b) of the Federal Rules of Criminal Procedure.

The revised section was so written as to limit the authority of the Secretary of the Treasury to forfeitures within the enforcement powers of the Treasury Department, which advises that it does not investigate counterfeiting offenses not involving coins, currency, or Government obligations and securities. The Attorney General is the appropriate officer to remit or mitigate other forfeitures.

Changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Philatelic reproductions permitted, see section 504 of this title.

Vessels, vehicles, and aircrafts used in counterfeiting forfeited, see section 781 et seq. of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 493. Bonds and obligations of certain lending agencies

Whoever falsely makes, forges, counterfeits or alters any note, bond, debenture, coupon, obligation, instrument, or writing in imitation or purporting to be in imitation of, a note, bond, debenture, coupon, obligation, instrument or writing, issued by the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, or any land bank, intermediate credit bank, insured credit union, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever passes, utters, or publishes, or attempts to pass, utter or publish any note, bond, debenture, coupon, obligation, instrument or document knowing the same to have been falsely made, forged, counterfeited or altered, contrary to the provisions of this section, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711; Oct. 4, 1961, Pub. L. 87-353, § 3(p), 75 Stat. 774; May 25, 1967, Pub. L. 90-19, § 24(a), 81 Stat. 27; Oct. 19, 1970, Pub. L. 91-468, § 3, 84 Stat. 1016.)

HISTORICAL AND REVISION NOTES

Based on sections 264(t), 982, 1126, 1138d(b), 1316, 1441(b), 1467(b), 1731(b) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(b) of title 15, U.S.C. 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 12B(t), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178, and amended Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684; July 17, 1916, ch. 245, § 31 (second paragraph), 39 Stat. 383; July 17, 1916, ch. 245, § 211(f), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1460; Mar. 4, 1923, ch. 252, title II, § 216(f), 42 Stat. 1472; Jan. 22, 1932, ch. 8, § 16(b), 47 Stat. 11; July 22, 1932, ch. 522, § 21(b), 47 Stat. 736; June 13, 1933, ch. 64, § 8(b), 48 Stat. 134; June 16, 1933, ch. 98, § 64(b), 48 Stat. 268; June 27, 1934, ch. 847, § 512(b), 48 Stat. 1265).

Each of the nine sections from which this section was derived contained similar provisions with respect to one or more named agencies or corporations. The punishment was the same in each section except that in sections 982, 1126, and 1316 of title 12, U.S.C., 1940 ed., Banks and Banking, the maximum fine was $5,000. This section adopts the $10,000 maximum fine provided in the other six former sections.

This section condenses and simplifies the form of the former sections without change of substance, except where the maximum fine differs as noted above.

The enumeration of "note, bond, debenture, coupon, obligation, instrument, or writing" does not occur in any one of the original sections but is an adequate enumeration of the instruments mentioned in each.

Certain specific agencies are enumerated by name as are "land bank, intermediate credit bank, bank for cooperatives," but the phrase "or any lending, mortgage, insurance, credit, or savings and loan corporation or association" was used to embrace the following: National Farm Loan Association, Federal Savings and Loan Insurance Corporation, Federal Savings and Loan Associations, National Agricultural Credit Corporation, Production Credit Corporations, Production Credit Associations, Home Loan Banks, National Mortgage Associations, and Central Bank for Cooperatives, Regional Agricultural Credit Corporation, or any instrumentalities created for similar purposes.

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary, such persons being principals by section 2 of this title.

The section was written in two paragraphs; the first denouncing forgery, counterfeiting, and altering; the second, passing, uttering, and publishing. This arrangement, together with the simplified style of the rewritten section, will permit the repeal of similar provisions in at least nine complicated sections now in title 12, U.S.C., 1940 ed., Banks and Banking.

Section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, was omitted from this revision and recommended for repeal. It provides as follows: "Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, on conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful act."

The only case construing such subsection (f) is *United States* v. *Halbrook*, D.C. Mo. 1941, 36 F. Supp. 345, in which the District Judge said by way of obiter dictum in a footnote that "Under this section no overt act need be shown as is true in the case of a prosecution under section 37 of the Criminal Code", now section 371 of this title.

Indeed the indictment upon which Halbrook was acquitted was drawn under section 88 of title 18, U.S.C., 1940 ed., now section 371 of this title, which required allegation and proof of an overt act and provided punishment by fine of not more than $10,000, or imprisonment for not more than 2 years, or both. The second indictment charged only substantive violations and involved neither conspiracy section.

It will be noted that section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, applies in terms only to the Farm Credit Administration, intermediate credit banks, Federal Farm Mortgage Corporation, and by reference to the banks for cooperatives, Production Credit Associations and Production Credit Corporations, and is not applicable to land banks, loan associations, Federal Housing Administration, Home Owners' Loan Corporation, or other institutions.

It is also noted that in the only reported case involving this section, the United States attorney drew his conspiracy indictment not under section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, but under section 88 of title 18, U.S.C., 1940 ed., which is now section 371 of this title, indicating considerable doubt as to the scope and effect of section 1138d(f) of said title 12, U.S.C., 1940 ed., Banks and Banking.

There is no sound reason for differentiating between types of credit, insurance, banking and lending agencies in the punishment of conspiracy or in the requirement as to proof of overt acts. Since conspiracies in-

volving offenses equally serious such as obstruction of justice, bribery, embezzlements, counterfeiting and false statements and offenses against the Treasury of the United States as well as the Federal Deposit Insurance Corporation and the Home Owners' Loan Corporation are punishable under the general conspiracy statute, the same rule should be applied to lesser agencies.

The blanket provision for punishment of "any person who willfully violates any other provision of this Act" was omitted as useless, in view of the specific provisions for penalties elsewhere in the Act.

AMENDMENTS

1970—Pub. L. 91-468 added the National Credit Union Administration and insured credit unions in the enumeration of lending agencies.

1967—Pub. L. 90-19 substituted "Department of Housing and Urban Development" for "Federal Housing Administration".

1961—Pub. L. 87-353 struck out "Federal Farm Mortgage Corporation" following "Federal Housing Administration".

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the said Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084 set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section in so far as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3056 of this title.

§ 494. Contractors' bonds, bids, and public records

Whoever falsely makes, alters, forges, or counterfeits any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or

Whoever utters or publishes as true or possesses with intent to utter or publish as true, any such false, forged, altered, or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited; or

Whoever transmits to, or presents at any office or to any officer of the United States, any such false, forged, altered, or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited—

Shall be fined not more than $1,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 72 (Mar. 4, 1909, ch. 321, § 28, 35 Stat. 1094).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were also made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 495. Contracts, deeds, and powers of attorney

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined not more than $1,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 73 (Mar. 4, 1909, ch. 321, § 29, 35 Stat. 1094).

Reference in first paragraph to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Claims against the United States, use of counterfeited or forged power of attorney, authority or instrument, see section 1003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 496. Customs matters

Whoever forges, counterfeits or falsely alters any writing made or required to be made in connection with the entry or withdrawal of imports or collection of customs duties, or uses any such writing knowing the same to be forged, counterfeited or falsely altered, shall be fined not more than $10,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 119 (Mar. 4, 1909, ch. 321, § 63, 35 Stat. 1100).

Section was rewritten to apply to all customs documents or writings. The Treasury Department advises that certificates of entry are obsolete.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 497. Letters patent

Whoever falsely makes, forges, counterfeits, or alters any letters patent granted or purporting to have been granted by the President of the United States; or

Whoever passes, utters, or publishes, or attempts to pass, utter, or publish as genuine, any such letters patent, knowing the same to be forged, counterfeited or falsely altered—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 71 (Mar. 4, 1909, ch. 321, § 27, 35 Stat. 1094).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 498. Military or naval discharge certificates

Whoever forges, counterfeits, or falsely alters any certificate of discharge from the military or naval service of the United States, or uses, unlawfully possesses or exhibits any such certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 712.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940, ed., § 136 (Mar. 4, 1917, ch. 180, 39 Stat. 1182).

Reference to any person causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

At the end of this section words "in the discretion of the court" were omitted as unnecessary, as the punishment provisions, being framed in the alternative by the use of the disjunctive "or," vest in the court the power to impose a fine or prison sentence in its discretion.

Changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 499. Military, naval, or official passes

Whoever falsely makes, forges, counterfeits, alters, or tampers with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with intent to defraud uses or possesses any such pass or permit, or personates or falsely represents himself to be or not to be a person to whom such pass or permit has been duly issued, or willfully allows any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 132 (June 15, 1917, ch. 30, title X, § 3, 40 Stat. 228).

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title.

§ 500. Money orders

Whoever, with intent to defraud, falsely makes, forges, counterfeits, engraves, or prints any order in imitation of or purporting to be a blank money order or a money order issued by or under the direction of the Post Office Department or Postal Service; or

Whoever forges or counterfeits the signature or initials of any person authorized to issue money orders upon or to any money order, postal note, or blank therefor provided or issued by or under the direction of the Post Office Department or Postal Service, or post office department or corporation of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereof; or

Whoever falsely alters, in any material respect, any such money order or postal note; or

Whoever, with intent to defraud, passes, utters or publishes or attempts to pass, utter or publish any such forged or altered money order or postal note, knowing any material initials, signature, stamp impression or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or

Whoever issues any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States or Postal Service, or any officer, employee, or agent thereof, any sum of money whatever; or

Whoever embezzles, steals, or knowingly converts to his own use or to the use of another, or without authority converts or disposes of any blank money order form provided by or under the authority of the Post Office Department or Postal Service; or

Whoever receives or possesses any such money order form with the intent to convert it to his own use or gain or use or gain of another knowing it to have been embezzled, stolen or converted; or

Whoever, with intent to defraud the United States, the Postal Service, or any person, transmits, presents, or causes to be transmitted or presented, any money order or postal note knowing the same—

(1) to contain any forged or counterfeited signature, initials, or any stamped impression, or

(2) to contain any material alteration therein unlawfully made, or

(3) to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, or

(4) to have been stamped without lawful authority; or

Whoever steals, or with intend to defraud or without being lawfully authorized by the Post Office Department or Postal Service, receives, possesses, disposes of or attempts to dispose of any postal money order machine or any stamp, tool, or instrument specifically designed to be used in preparing or filling out the blanks on postal money order forms—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(5), 84 Stat. 777; Sept. 23, 1972, Pub. L. 92-430, 86 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 347 (Mar. 4, 1909, ch. 321, § 218, 35 Stat. 1131).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1972—Pub. L. 92-430 substituted "a blank money order or a money order issued by or under the direction of" for "a money order issued by" and struck out ", or by any officer or employee thereof" in the first par.; substituted "or initials of any person authorized to issue money orders" for "of any officer or employee of the Postal Service," in the second par.; inserted "or attempts to pass, utter or publish" preceding "any such forged" and substituted "material initials, signature, stamp impression" for "material signature" in the fourth par.; inserted "or Postal Service" following "the United States" in the fifth par.; added sixth and seventh pars.; inserted ", the Postal Service" following "the United States", and substituted "presents, or causes to be transmitted or presented, any money order" for "or presents to any officer or employee, or at any office of the United States, any money order" and designated material following "knowing the same" as cls. (1) to (3) with minor changes and added cl. (4) in eighth par.; added ninth par., and enacted provisions of former seventh par. as tenth par.

1970—Pub. L. 91-375 inserted reference to Postal Service and substituted "officer or employee" for "postmaster or agent" in first par. and substituted "officer or employee of the Postal Service" for "postmaster, assistant postmaster, chief clerk, or clerk" and "Post Office Department or the Postal Service, or post office department or corporation of any foreign country" for "Post Office Department of the United States, or of any foreign country" in second par.

CHANGE OF NAME

The Post Office Department has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(c), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

§ 501. Postage stamps, postage meter stamps, and postal cards

Whoever forges or counterfeits any postage stamp, postage meter stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving thereof; or

Whoever makes or prints, or knowingly uses or sells, or possesses with intent to use or sell, any such forged or counterfeited postage stamp, postage meter stamp, stamped envelope, postal card, die, plate, or engraving; or

Whoever makes, or knowingly uses or sells, or possesses with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or

Whoever makes or prints, or authorizes to be made or printed, any postage stamp, postage meter stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post Office Department or by the Postal Service, without the special authority and direction of the Department or Postal Service; or

Whoever after such postage stamp, postage meter stamp, stamped envelope, or postal card has been printed, with intent to defraud, delivers the same to any person not authorized by an instrument in writing, duly executed under the hand of the Postmaster General and the seal of the Post Office Department or the Postal Service, to receive it—

Shall be fined not more than $500 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(6), 84 Stat. 777; Oct. 14, 1970, Pub. L. 91-448, § 1(a), 84 Stat. 920.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 348 (Mar. 4, 1909, ch. 321, § 219, 35 Stat. 1132).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes of phraseology were made.

AMENDMENTS

1970—Pub. L. 91-448 inserted references to the Postal Service and to postage meter stamps. Pub. L. 91-448, § 1(b), repealed section 6(j)(6) of the Postal Reorganization Act, Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 719, by which the references to the Postal Service had been inserted earlier.

Pub. L. 91-375 inserted "or by the Postal Service," following "Post Office Department," and substituted "the Department or Postal Service" for "said department" in fourth par. and deleted the comma following "stamped envelope" and "to defraud" and inserted "or the Postal Service" following "Post Office Department" in fifth par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CHANGE OF NAME

The Post Office Department has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(*a*), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

§ 502. Postage and revenue stamps of foreign governments

Whoever forges, or counterfeits, or knowingly utters or uses any forged or counterfeit postage stamp or revenue stamp of any foreign government, shall be fined not more than $500 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 349 (Mar. 4, 1909, ch. 321, § 220, 35 Stat. 1132; May 26, 1926, ch. 396, 44 Stat. 653).

A paragraph defining "foreign government" was combined with other like provisions to form section 11 of this title. A proviso against repeal, "Provided, however, That nothing in this section shall be held to repeal or modify section 350 of this title [now section 504 of this title]", was deleted as unnecessary since that section by express reference to this one makes it clear that these sections are in pari materia.

Minor changes in phraseology were also made.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Philatelic reproductions permitted, see section 504 of this title.

§ 503. Postmarking stamps

Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sells, or possesses with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 349a (Aug. 26, 1935, ch. 692, 49 Stat. 866).

Minor changes in phraseology were made.

§ 504. Printing and filming of United States and foreign obligations and securities

Notwithstanding any other provision of this chapter, the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) postage stamps of the United States,

(B) revenue stamps of the United States,

(C) any other obligation or other security of the United States, and

(D) postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation,

for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) all illustrations (including illustrations of uncancelled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) the negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) the making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term "postage stamp" includes postage meter stamps.

(June 25, 1948, ch. 645, 62 Stat. 713; Sept. 2, 1958, Pub. L. 85-921, § 1, 72 Stat. 1771; June 20, 1968; Pub. L. 90-353, § 1, 82 Stat. 240; Oct. 14, 1970, Pub. L. 91-448, § 2, 84 Stat. 921.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 350 (Mar. 3, 1923, ch. 218, 42 Stat. 1437; Jan. 27, 1938, ch. 10, § 2, 52 Stat. 6).

Minor changes in phraseology were made.

AMENDMENTS

1970—Pub. L. 91-448 added provision including postage meter stamp within the meaning of postage stamp for the purposes of this section.

1968—Par. (1). Pub. L. 90-353 added provisions so as to permit colored illustrations of canceled United States postage stamps in the exact size of genuine stamps and colored illustrations of uncanceled United States and foreign stamps if the size of the illustrations is less than three-fourths or more than one and one-half times the size of the genuine stamps and permitted the use of colored illustrations of stamps in public documents relating to stamps printed by the Government Printing Office at the request of the Postmaster General.

1958—Pub. L. 85-921 permitted black and white illustrations of revenue stamps of the United States for philatelic and numismatic purposes, black and white illustrations of United States and foreign paper money and other obligations and securities for educational, historical, and newsworthy purposes, and permitted motion picture films, microfilms, and slides of United States and foreign postage and revenue stamps, paper money, and other obligations and securities, except films in connection with advertising.

§ 505. Seals of courts; signatures of judges or court officers

Whoever forges the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or forges or counterfeits the seal of any such court, or knowingly concurs in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or tenders in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 714.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 236 (Mar. 4, 1909, ch. 321, § 130, 35 Stat. 1112).

Mandatory punishment provision was rephrased in the alternative.

Minor changes of phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 506. Seals of departments or agencies

Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or

Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, multilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or

Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 714.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 131 (June 15, 1917, ch. 30, title X, § 2, 40 Stat. 228).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

In view of definitions of department and agency in section 6 of this title, words "department or agency" in first paragraph were substituted for "executive department, or any bureau, commission, or office".

Provision for 10 years' imprisonment was reduced to 5 years to conform to punishment provision in section 505 of this title, covering an offense of like gravity.

Minor changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Government seals wrongfully used and instruments wrongfully sealed, see section 1017 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title; title 12 section 1457.

§ 507. Ship's papers

Whoever falsely makes, forges, counterfeits, or alters any instrument in limitation of or purporting to be, an abstract or official copy or certificate of the recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or

Whoever utters, publishes, or passes, or attempts to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud—

Shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 714.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 129 (Mar. 4, 1909, ch. 321, § 72, 35 Stat. 1101).

The words "passport" and "sea letter" were omitted as obsolete, in view of the Presidential proclamation of April 10, 1815, discontinuing the use of such passports and sea letters.

Mandatory punishment provisions were rephrased in the alternative.

Minor changes of phraseology were made.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Certificate, license or document issued to vessels, officers or seamen, counterfeiting or forging, see section 2197 of this title.

Provisions relating to recording, registry, or enrollment of vessels, etc., see Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 508. Transportation requests of Government

Whoever falsely makes, forges, or counterfeits in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof, or knowingly alters any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof; or

Whoever knowingly passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form or request—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 146 (Dec. 11, 1926, ch. 2, § 1, 44 Stat. 917).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Also, in first paragraph, word "agency" was substituted for "branch", in view of definitions of department and agency in section 6 of this title.

Words "upon conviction" in last paragraph were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes of phraseology were also made.

CANAL ZONE

Applicability to section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3056 of this title.

§ 509. Possessing and making plates or stones for Government transportation requests

Whoever, except by lawful authority, controls, holds or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any form or request for Government transportation, or uses such plate, stone, or other thing, or knowingly permits or suffers the same to be used in making any such form or request or any part of such a form or request; or

Whoever makes or engraves any plate, stone, or thing, in the likeness of any plate, stone, or thing designated for the printing of the genuine issues of the form or request for Government transportation; or

Whoever prints, photographs, or in any other manner makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine form or request for Government transportation, or any part thereof; or

Whoever brings into the United States or any place subject to the jurisdiction thereof, any plate, stone, or other thing, or engraving, photograph, print, or other impression of the form or request for Government transportation—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 147 (Dec. 11, 1926, ch. 2, § 2, 44 Stat. 918).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Words "upon conviction" in last paragraph were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3056 of this title.

CHAPTER 27—CUSTOMS

Sec.
541. Entry of goods falsely classified.
542. Entry of goods by means of false statements.
543. Entry of goods for less than legal duty.
544. Relanding of goods.
545. Smuggling goods into the United States.

Sec.
546. Smuggling goods into foreign countries.
547. Depositing goods in buildings on boundaries.
548. Removing or repacking goods in warehouses.
549. Removing goods from customs custody; breaking seals.
550. False claim for refund of duties.
551. Concealing or destroying invoices or other papers.
552. Officers aiding importation of obscene or treasonous books and articles.

CROSS REFERENCES

Bribery of public officials, see section 201 of this title.

Forfeitures; penalty for aiding unlawful importation, see section 1595a of Title 19, Customs Duties.

Libel of vessels and vehicles, see section 1594 of Title 19.

Search of vehicles and persons, see section 482 of Title 19.

Searches and seizures, see section 1595 of Title 19.

§ 541. Entry of goods falsely classified

Whoever knowingly effects any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification as to quality or value, or by the payment of less than the amount of duty legally due, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 126 (Mar. 4, 1909, ch. 321, § 69, 35 Stat. 1101).

Reference to persons aiding, contained in words "or aid in effecting," was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Libel of vessels and vehicles, see section 1594 of Title 19, Customs Duties.

§ 542. Entry of goods by means of false statements

Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties; or

Whoever is guilty of any willful act or omission whereby the United States shall or may be deprived of any lawful duties accruing upon merchandise embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission—

Shall be fined for each offense not more than $5,000 or imprisoned not more than two years, or both.

Nothing in this section shall be construed to relieve imported merchandise from forfeiture under other provisions of law.

The term "commerce of the United States", as used in this section, shall not include commerce with the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 715; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242.)

HISTORICAL AND REVISION NOTES

Based on section 1591 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(a), 49 Stat. 527).

The reference in the first paragraph to persons aiding, contained in the phrase "or aids," was omitted as unnecessary as such persons are made principals by section 2 of this title.

Words "upon conviction" before "be fined" were omitted as surplusage since punishment cannot be imposed until conviction is secured.

Enumeration of persons at beginning of section and provision preserving forfeitures where authorized by law were omitted as surplusage.

The fourth paragraph was added to the revised section to make clear the intent of Congress that forfeiture is an additional consequence independent of the criminal punishment.

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Changes in phraseology were also made.

REFERENCES IN TEXT

The Philippine Islands, referred to in text, are now independent and known as the Republic of the Philippines. See section 1394 of Title 22, Foreign Relations and Intercourse, and 1946 Proc. No. 2695, set out as a note under that section.

AMENDMENTS

1955—Act June 30, 1955, inserted "Johnston Island".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note under section 1401 of Title 19, Customs Duties.

CROSS REFERENCES

Counterfeit writings in connection with customs matters, see section 496 of this title.

False shipping manifest or lack of manifest in connection with importation of goods, penalties, see section 1584 of Title 19, Customs Duties.

Forfeiture of property imported into the United States, which is the subject of any contract, combination or conspiracy mentioned in section 8 of Title 15, Commerce and Trade, see section 11 of Title 15, Commerce and Trade.

Forgery of writings in connection with customs matters, see section 496 of this title.

Narcotic drugs, seizure and forfeiture of, see section 881 of Title 21, Foods and Drugs.

Penalty against goods, see section 1592 of Title 19, Customs Duties.

§ 543. Entry of goods for less than legal duty

Whoever, being an officer of the revenue, knowingly admits to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due, shall be fined not more than $5,000 or imprisoned not more than two years, or both, and removed from office.

(June 25, 1948, ch. 645, 62 Stat. 716.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 125 (Mar. 4, 1909, ch. 321, § 68, 35 Stat. 1101).

Reference to persons aiding, contained in words "or aid in admitting," was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Bribery of public officials, see section 201 of this title.

Compromise of customs liabilities, penalty, see section 1915 of this title.

Forfeitures, penalty for aiding unlawful importation, see section 1595a of Title 19, Customs Duties.

§ 544. Relanding of goods

If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry having been made, such merchandise shall be considered as having been imported into the United States contrary to law, and each person concerned shall be fined not more than $5,000 or imprisoned not more than two years, or both; and such merchandise shall be forfeited.

The term "any place in the United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 716; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242.)

HISTORICAL AND REVISION NOTES

Based on section 1589 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 589, 46 Stat. 750).

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The Philippine Islands, referred to in text, are now independent and known as the Republic of the Philippines. See section 1394 of Title 22, Foreign Relations and Intercourse, and 1946 Proc. No. 2695, set out as a note under that section.

AMENDMENTS

1955—Act June 30, 1955, inserted "Johnston Island".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note under section 1401 of Title 19, Customs Duties.

§ 545. Smuggling goods into the United States

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 716; Aug. 24, 1954, ch. 890, § 1, 68 Stat. 782; Sept. 1, 1954, ch. 1213, title V, § 507, 68 Stat. 1141; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242.)

HISTORICAL AND REVISION NOTES

Based on section 1593 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751).

Reference in first paragraph to aiders, contained in words "his, her, or their aiders and abettors" was omitted as unnecessary since such persons are made principals by section 2 of this title. For the same reason words "or assists in so doing" in second paragraph were deleted.

Words "shall be deemed guilty of a misdemeanor," in first paragraph were omitted in view of definition of misdemeanor in section 1 of this title.

Conviction provision in first paragraph reading "and on conviction thereof" was deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minimum punishment provision "nor less than $50" in second paragraph was deleted.

Forfeiture provision was rephrased to make it clear that forfeiture was not dependent upon conviction.

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Changes were made in phraseology.

REFERENCES IN TEXT

The Philippine Islands, referred to in text, are now independent and known as the Republic of the Philippines. See section 1394 of Title 22, Foreign Relations and Intercourse, and 1946 Proc. No. 2695, set out as a note under that section.

AMENDMENTS

1955—Act June 30, 1955, inserted "Johnston Island".

1954—Act Sept. 1, 1954, permitted the forfeiture of the value of merchandise imported in violation of the section.

Act Aug. 24, 1954, increased the fine from $5,000 to $10,000 and the imprisonment from two years to five years.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note under section 1401 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1954 AMENDMENTS

Section 2 of act Aug. 24, 1954, provided that the amendment should apply only with respect to offenses committed on and after Aug. 24, 1954.

CROSS REFERENCES

False shipping manifest or lack of manifest in connection with importation of goods, penalties, see section 1584 of Title 19, Customs Duties.

Forfeitures generally, see sections 2461 to 2465 of Title 28, Judiciary and Judicial Procedure.

Narcotic drugs—

Penalty for aiding unlawful importation, see section 1595a of Title 19, Customs Duties.

Search of vehicles and persons, see section 482 of Title 19.

Seizure and forfeiture of, see section 881 of Title 21, Foods and Drugs.

FEDERAL RULES OF CRIMINAL PROCEDURE

Searches and seizures, generally, see rule 41, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 135a; title 31 section 1034.

§ 546. Smuggling goods into foreign countries

Any person owning in whole or in part any vessel of the United States who employs, or participates in, or allows the employment of, such vessel for the purpose of smuggling, or attempting to smuggle, or assisting in smuggling, any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, and any citizen of, or person domiciled in, or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or indirectly, whether through ownership of corporate shares or otherwise, and allowing the employment of said vessel for any such purpose, and any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

It shall constitute an offense under this section to hire out or charter a vessel if the lessor or charterer has knowledge or reasonable grounds for belief that the lessee or person chartering the vessel intends to employ such vessel for any of the purposes described in this section and if such vessel is, during the time such lease or charter is in effect, employed for any such purpose.

(June 25, 1948, ch. 645, 62 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on section 1702 of title 19, U.S.C., 1940 ed., Customs Duties (Aug. 5, 1935, ch. 438, title I, § 2, 49 Stat. 518).

Changes were made in phraseology.

REFERENCES IN TEXT

The laws of the United States respecting the customs revenue, referred to in text, are classified generally to Title 19, Customs Duties.

§ 547. Depositing goods in buildings on boundaries

Whoever receives or deposits any merchandise in any building upon the boundary line between the United States and any foreign country, or carries any merchandise through the same, in violation of law, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on section 1596 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 752).

Reference to persons aiding, contained in words "or aids therein," was omitted as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Searches and seizures, see section 1595 of Title 19, Customs Duties.

§ 548. Removing or repacking goods in warehouses

Whoever fraudulently conceals, removes, or repacks merchandise in any bonded warehouse or fraudulently alters, defaces or obliterates any marks or numbers placed upon packages deposited in such warehouse, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

Merchandise so concealed, removed, or repacked, or packages upon which any marks or numbers have been so altered, defaced, or obliterated, shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on section 1597 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 597, 46 Stat. 752).

This section was rewritten to place the criminal provisions ahead of the forfeiture provisions. This did not require any substantive changes except omission of reference to persons aiding. Such persons are made principals by section 2 of this title.

The punishment prescribed by section 545 of this title was inserted to make this section complete without reference to another section. In doing so it was necessary to rephrase the punishment provision of section 545 of this title, as originally enacted, without change of substance.

Forfeiture provision was rephrased to make it clear that forfeiture was not dependent upon conviction.

Changes were made in phraseology.

§ 549. Removing goods from customs custody; breaking seals

Whoever, without authority, affixes or attaches a customs seal, fastening, or mark, or any seal, fastening, or mark purporting to be a customs seal, fastening, or mark to any vessel, vehicle, warehouse, or package; or

Whoever, without authority, willfully removes, breaks, injures, or defaces any customs seal or other fastening or mark placed upon any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody; or

Whoever maliciously enters any bonded warehouse or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove therefrom any merchandise or baggage therein, or unlawfully removes any merchandise or baggage in such vessel, vehicle, or bonded warehouse or otherwise in customs custody or control; or

Whoever receives or transports any merchandise or baggage unlawfully removed from any

such vessel, vehicle, or warehouse, knowing the same to have been unlawfully removed—

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on section 1598 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 598, 46 Stat. 752; June 25, 1938, ch. 679, § 26, 52 Stat. 1089).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

In view of definition of felony in section 1 of this title words "guilty of a felony" were omitted. (See reviser's note under section 550 of this title.)

The punishment prescribed by section 545 of this title was inserted to make this section complete without reference to another section. In doing so it was necessary to rephrase the punishment provision of section 545 of this title, as originally enacted, without change of substance.

Forfeiture provision was omitted to conform with current administrative practice.

Changes were made in phraseology.

§ 550. False claim for refund of duties

Whoever knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, shall be fined not more than $5,000 or imprisoned not more than two years, or both, and such merchandise or the value thereof shall be forfeited.

(June 25, 1948, ch. 645, 62 Stat. 718.)

HISTORICAL AND REVISION NOTES

Based on section 1590 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750).

Reference to felony, contained in words "such person shall be guilty of a felony" was omitted as unnecessary in view of definition of felony in section 1 of this title. This, too, was the policy adopted by the codifiers of the 1909 Criminal Code. (See S. Rept. 10, pt. I, pp. 12, 13, and 14, 60th Cong., 1st sess.)

Words "and upon conviction thereof" before "shall be punished" were also omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Changes were made in phraseology.

§ 551. Concealing or destroying invoices or other papers

Whoever willfully conceals or destroys any invoice, book, or paper relating to any merchandise imported into the United States, after an inspection thereof has been demanded by the collector of any collection district; or

Whoever conceals or destroys at any time any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained—

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 718.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 120 (Mar. 4, 1909, ch. 321, § 64, 35 Stat. 1100).

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

CROSS REFERENCES

Invoices—

Generally, see section 1481 of Title 19, Customs Duties.

Description of explosives, see section 833 of this title.

§ 552. Officers aiding importation of obscene or treasonous books and articles

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 718; Jan. 8, 1971, Pub. L. 91-662, § 2, 84 Stat. 1973.)

HISTORICAL AND REVISION NOTES

Based on section 1305(b) of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title III, § 305(b), 46 Stat. 688).

In view of definition of misdemeanor in section 1 of this title words "shall be deemed guilty of a misdemeanor, and" were omitted.

Words "at hard labor" after "imprisonment" were omitted. (See reviser's note under section 1 of this title.)

Changes were made in phraseology.

AMENDMENTS

1971—Pub. L. 91-662 struck out "preventing conception or" preceding "procuring abortion".

EFFECTIVE DATE OF 1971 AMENDMENT

Section 7 of Pub. L. 91-662 provided that: "The amendments made by this Act (other than by section 6) [amending this section, sections 1461 and 1462 of this title, and section 1305 of Title 19, Customs Duties] shall take effect on the day after the date of the enactment of this Act [Jan. 8, 1971]."

CROSS REFERENCES

Bribery of public officials, see section 201 of this title.

Compromise of customs liabilities, penalty, see section 1915 of this title.

Forfeitures, penalty for aiding unlawful importation, see section 1595a of Title 19, Customs Duties.

Immoral articles, importation prohibited, see section 1305 of Title 19.

CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

Sec.
591. Definitions.
592. Troops at polls.
593. Interference by armed forces.
594. Intimidation of voters.
595. Interference by administrative employees of Federal, State, or Territorial Governments.
596. Polling armed forces.
597. Expenditures to influence voting.
598. Coercion by means of relief appropriations.
599. Promise of appointment by candidate.
600. Promise of employment or other benefit for political activity.
601. Deprivation of employment or other benefit for political contribution.
602. Solicitation of political contributions.
603. Place of solicitation.
604. Solicitation from persons on relief.
605. Disclosure of names of persons on relief.
606. Intimidation to secure political contributions.
607. Making political contributions.
[608 to 617. Repealed.]

SENATE REVISION AMENDMENT

By Senate amendment, item 610 was changed to read, "610. Contributions or expenditures by national banks, corporations, or labor organizations". See Senate Report No. 1620, amendment Nos. 4 and 5, 80th Cong.

AMENDMENTS

1976—Pub. L. 94-453, § 2, Oct. 2, 1976, 90 Stat. 1517, substituted "political contribution" for "political activity" in item 601.

Pub. L. 94-283 title II, § 201(b), May 11, 1976, 90 Stat. 496, struck out items "608. Limitations on contributions and expenditures", "610. Contributions or expenditures by national banks, corporations or labor organizations", "611. Contributions by Government contractors", "612. Publication or distribution of political statements", "613. Contributions by foreign nationals", "614. Prohibition of contributions in name of another", "615. Limitation on contributions of currency", "616. Acceptance of excessive honorariums", and "617. Fraudulent misrepresentation of campaign authority".

1974—Pub. L. 93-443, title I, § 101(d)(4)(B), (f)(3), Oct. 15, 1974, 88 Stat. 1267, 1268, substituted in item 613 "Contributions by foreign nationals" for "Contributions by agents of foreign principals", and added items 614 to 617.

1972—Pub. L. 92-225, title II, § 207, Feb. 7, 1972, 86 Stat. 11, substituted "contributions and expenditures" for "political contributions and purchases" in item 608, "Repealed" for "Maximum contributions and expenditures" in item 609, and "Government contractors" for "firms or individuals contracting with the United States" in item 611.

1966—Pub. L. 89-486, § 8(c)(1), July 4, 1966, 80 Stat. 249, added item 613.

CROSS REFERENCES

Penalties for violations, see section 441 of Title 2, The Congress.

§ 591. Definitions

Except as otherwise specifically provided, when used in this section and in sections 597, 599, 600, and 602 of this title—

(a) "election" means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, or (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

(b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution"—

(1) means a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political commit-

tee without charge for any such purpose, except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of ensuring compliance with the provisions of the Federal Election Campaign Act of 1971 or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b) of the Federal Election Campaign Act of 1971; but

(5) does not include—

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate, or

(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election;

(f) "expenditure"—

(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express, or implied, whether or not legally enforceable, to make any expenditure; and

(3) means the transfer of funds by a political committee to another political committee; but

(4) does not include—

(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(B) nonpartisan activity designed to encourage individuals to register to vote or to vote;

(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(E) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

(F) the payment, by any person other than a candidate or political committee, of compensation for legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, or the payment for legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of ensuring compliance with the provisions of the Federal Election Campaign Act of 1971 or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the

person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported under section 304(b) of the Federal Election Campaign Act of 1971;

(G) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(H) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

(I) any costs incurred by a candidate in connection with the solicitation of contributions by such candidate, except that this clause shall not apply with respect to costs incurred by a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 320(b) of the Federal Election Campaign Act of 1971; or

(J) any costs incurred by a political committee (as such term is defined under section 320(a)(2) of the Federal Election Campaign Act of 1971) with respect to the solicitation of contributions to such political committee or to any general political fund controlled by such political committee, except that this clause shall not apply to exempt costs incurred with respect to the solicitation of contributions to any such political committee made through broadcasting stations, newspapers, magazines, outdoor advertising facilities, and other similar types of general public political advertising;

to the extent that the cumulative value of activities by any individual on behalf of any candidate under each of clauses (D) or (E) does not exceed $500 with respect to any election;

(g) "person" and "whoever" mean an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(h) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and

(i) "political party" means any association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization;

(j) "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Federal Election Commission;

(k) "national committee" means the organization which, by virtue of the bylaws of the political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Federal Election Commission established under section 309(a) of the Federal Election Campaign Act of 1971; and

(*l*) "principal campaign committee" means the principal campaign committee designated by a candidate under section 302(f)(1) of the Federal Election Campaign Act of 1971.

(June 25, 1948, ch. 645, 62 Stat. 719; May 24, 1949, ch. 139, § 9, 63 Stat. 90; Sept. 22, 1970, Pub. L. 91-405, title II, § 204(d)(4), 84 Stat. 853; Feb. 7, 1972, Pub. L. 92-225, title II, § 201, 86 Stat. 8; Oct. 15, 1974, Pub. L. 93-443, title I, §§ 101(f)(2), 102, 88 Stat. 1268, 1269; May 11, 1976, Pub. L. 94-283, title I, § 115(g), title II, § 202, 90 Stat. 496.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 241(a)–(f), (i) of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, § 302(a–f, i), 43 Stat. 1070).

First paragraph was inserted to indicate sections to which definitions are applicable.

Minor changes in phraseology were made.

1949 ACT

This section [section 9] eliminates from the definition of "election" in section 591 of title 18, U.S.C., the reference to the election of a Resident Commissioner from the Philippine Islands. The Philippine Islands are now independent, and there is no longer a Resident Commissioner from the Philippines.

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (e)(4) and (f)(4)(F), is Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3. For classification of this Act to the Code, see Short Title notes under section 431 of Title 2, The Congress, and Tables volume.

Chapter 95 or chapter 96 of the Internal Revenue Code of 1954, referred to in subsecs. (e)(4) and (f)(4)(F), means chapter 95 (§ 9001 et seq.) and chapter 96 (§ 9031 et seq.), respectively, of Title 26, Internal Revenue Code.

Section 304(b) of the Federal Election Campaign Act of 1971, referred to in subsecs. (e)(4) and (f)(4)(F), is classified to section 434(b) of title 2.

Section 320(b) of the Federal Election Campaign Act of 1971, referred to in subsec. (f)(4)(I), is classified to section 441a(b) of title 2.

Section 320(a)(2) of the Federal Election Campaign Act of 1971, referred to in subsec. (f)(4)(J), is classified to section 441a(a)(2) of title 2.

Section 309(a) of the Federal Election Campaign Act of 1971, referred to in subsec. (k), is classified to section 437c(a) of title 2.

Section 302(f)(1), of the Federal Election Campaign Act of 1971, referred to in subsec. (*l*), was classified to section 432(f)(1) of title 2, which was redesignated section 432(e)(1) by Pub. L. 94-283, title I, § 103(c), May 11, 1976, 90 Stat. 480.

AMENDMENTS

1976—Pub. L. 94-283, § 202(a), in the introductory text, struck out references to sections 608, 610, 611, 614, 615, and 617 of this title.

Subsec. (e)(4). Pub. L. 94-283, § 202(b), added provisions covering the exception for legal or accounting services.

Subsec. (f)(4). Pub. L. 94-283, §§ 115(g)(1), (2), 202(c), added cl. (F), redesignated former cls. (F) to (I) as (G) to (J), respectively, substituted "section 320(b) of the Federal Election Campaign Act of 1971" for "section 608(c) of this title" in cl. (I) as so redesignated, and substituted "under section 320(a)(2) of the Federal Election Campaign Act of 1971" for "by section 608(b)(2) of this title" in cl. (J) as so redesignated.

Subsec. (k). Pub. L. 94-283, § 115(g)(3), substituted "309(a)" for "310(a)".

1974—Pub. L. 93-443, § 101(f)(2), in introductory text, inserted "Except as otherwise specifically provided," and references to sections 614, 615, and 617 of this title.

Subsec. (a). Pub. L. 93-443, § 102(a), deleted cl. (5) which included in the definition of "election", the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States.

Subsec. (d). Pub. L. 93-443, § 102(b), inserted reference to "club," preceding "association", deleted reference to "individual," preceding "committee" and substitued "other group of persons" and "receives" for "organization" and "accepts".

Subsec. (e). Pub. L. 93-443, § 102(c), transferred the word "means" following introductory word "contribution" to become the initial word in pars. (1) to (4); in par. (1), inserted parenthetical text ", which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors" following "course of business", substituted "or for the purpose of influencing the results of a primary" for ", for the purpose of influencing the results of a primary" and "President of the United States" for "President" and deleted end text reading ", or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States"; substituted in par. (3) "funds received by a political committee which are transferred to such committee from another political committee or other source" for "transfer of funds between political committees"; substituted in par. (4) "but" for "and"; and incorporated existing par. (5) in provisions designated as subpar. (A) of par. (5) and added subpars. (B) to (D) thereto.

Subsec. (f). Pub. L. 93-443, § 102(d), transferred the word "means" following introductory word "expenditure" to become the initial word in pars. (1) to (3); in par. (1), substituted "or for the purpose of influencing the results of a primary" for ", for the purpose of influencing the result of a primary" and "President of the United States" for "President" and deleted end text reading ", or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States"; substituted in par. (3) "the transfer of funds by a political committee to another political committee; but" for "a transfer of funds between political committees;"; and added par. (4).

Subsecs. (i) to (*l*). Pub. L. 93-443, § 102(e), added subsecs. (i) to (*l*).

1972—Pub. L. 92-225, in introductory text, inserted reference to sections 600, 608, and 611, and eliminated reference to section 609 of this title.

Subsec. (a). Pub. L. 92-225 substituted provision redefining "election" and designated as subsec. (a) for prior provision stating that " 'election' includes a general or special election, but does not include a primary election or convention of a political party".

Subsec. (b). Pub. L. 92-225 substituted provision redefining "candidate" and designated as subsec. (b) for prior provision stating that " 'candidate' means an individual whose name is presented for election as Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, whether or not such individual is elected".

Subsec. (c). Pub. L. 92-225 added provisions defining "Federal office".

Subsec. (d). Pub. L. 92-225 substituted provision redefining "political committee" and designated as subsec. (d) for prior provision stating that " 'political committee' includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors (1) in two or more States, or (2) whether or not more than one State if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association or organization".

Subsec. (e). Pub. L. 92-225 substituted provision redefining "contribution" and designated as subsec. (e) for prior provision stating that " 'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable".

Subsec. (f). Pub. L. 92-225 substituted provision redefining "expenditure" and designated as subsec. (f) for prior provision stating that " 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable".

Subsec. (g). Pub. L. 92-225 incorporated provision defining "person" and "whoever" in provision designated as subsec. (g).

Subsec. (h). Pub. L. 92-225 designated provision defining "State" as subsec (h) and specifically included in the definition "each State of the United States" and "the Commonwealth of Puerto Rico".

1970—Pub. L. 91-405 included District of Columbia in definition of "State".

1949—Act May 24, 1949, omitted from the first par. "and, in the case of a Resident Commissioner from the Philippine Islands, an election by the Philippine Legislature".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as a note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-225 effective on Dec. 31, 1971, or sixty days after date of enactment [Feb. 7, 1972], whichever is later, see section 408 of Pub. L. 92-225, set out as a note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

STATE LAWS AFFECTED; DEFINITIONS

Section 104 of Pub. L. 93-443 provided that:

"(a) The provisions of chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

"(b) For purposes of this section, the terms 'election', 'Federal office', and 'State' have the meanings given them by section 591 of title 18, United States Code."

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or

naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

(June 25, 1948, ch. 645, 62 Stat. 719.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 55 and 59 (Mar. 4, 1909, ch. 321, §§ 22, 26, 35 Stat. 1092, 1093).

This section consolidates sections 55 and 59 of title 18, U.S.C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

In second paragraph, words "or member of the Armed Forces of the United States" were substituted for "soldier, sailor, or marine" so as to cover those auxiliaries which are now component parts of the Army and Navy.

Changes in phraseology were also made.

CROSS REFERENCES

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 1901, 2071, 2381, 2385, and 2387 of this title.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

(June 25, 1948, ch. 645, 62 Stat. 719.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 56–59 (Mar. 4, 1909, ch. 321, §§ 23–26, 35 Stat. 1092, 1093).

Four sections were consolidated with only such changes of phraseology as were necessary to effect the consolidation.

CROSS REFERENCES

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 1901, 2071, 2381, 2385, and 2387 of this title.

Interference by Army or Navy officers with freedom of elections, see section 1972 of Title 42, The Public Health and Welfare.

§ 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 720; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(d)(5), 84 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61, 61g (Aug. 2, 1939, 11:50 a.m. E.S.T., ch. 410, §§ 1, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61 and 61g of title 18, U.S.C., 1940 ed., with changes in phraseology only.

AMENDMENTS

1970—Pub. L. 91–405 substituted "Delegate from the District of Columbia, or Resident Commissioner" for "Delegates or Commissioners from the Territories and possessions".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, summarized in a note set out under section 25 of Title 2, The Congress.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia, or any agency or instrumentality thereof, or by any State, Territory,

or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

(June 25, 1948, ch. 645, 62 Stat. 720; Sept. 22, 1970, Pub. L. 91-405, title II, § 204(d)(6), 84 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61a, 61g, 61n, 61s, 61u (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 2, 8, 53 Stat. 1147, 1148; July 19, 1940, ch. 640, § 1, 54 Stat. 767; Aug. 2, 1939, ch. 410, §§ 14, 19, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767; Aug. 2, 1939, ch. 410, § 21, as added Oct. 24, 1942, ch. 620, 56 Stat. 986).

This section consolidates sections 61s, 61n, and 61g with 61a, all of title 18, U.S.C., 1940 ed., in first paragraph, and incorporates section 61u as second paragraph.

Words "or agency thereof" and words "or any department or agency thereof" were inserted to remove any possible ambiguity as to scope of section. (See definitions of department and agency in section 6 of this title.)

Words "or by the District of Columbia or any agency or instrumentality thereof" were inserted upon authority of section 61n of title 18, U.S.C., 1940 ed., which provided that for the purposes of this section, "persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States."

After "State" the words "Territory, or Possession of the United States" were inserted in two places upon authority of section 61s of title 18, U.S.C., 1940 ed., which defined "State," as used in this section, as "any State, Territory, or possession of the United States."

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, made this punishment applicable to this section.

The second paragraph was derived from section 61u of title 18, U.S.C., 1940 ed., which made its provisions applicable to this section by reference.

Changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-405 substituted reference to Delegate from District of Columbia or Resident Commissioner for Delegate or Resident Commissioner from any Territory or Possession.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective on Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 596. Polling armed forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

The word "poll" means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

(June 25, 1948, ch. 645, 62 Stat. 720.)

HISTORICAL AND REVISION NOTES

Based on section 344 of title 50, U.S.C., 1940 ed., War and National Defense (Sept. 16, 1942, ch. 561, title III, § 314, as added Apr. 1, 1944, ch. 150, 58 Stat. 146).

Changes in phraseology were made.

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721.)

HISTORICAL AND REVISION NOTES

Based on sections 250, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 311, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 250 and 252 of title 2, U.S.C., 1940 ed., The Congress.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment provisions of section 252 of title 2, U.S.C., 1940 ed., The Congress, were incorporated at end of section upon authority of reference in such section making them applicable to this section.

Words "or both" were added to conform to the almost universal formula of the punishment provisions of this title.

Changes were made in phraseology.

CROSS REFERENCES

Definitions of terms applicable to this section, see section 591 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 3401 of this title.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61f, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410. §§ 7, 8, 53 Stat. 1148).

This section consolidates sections 61f and 61g of title 18, U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation.

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, was made applicable to this section.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721.)

HISTORICAL AND REVISION NOTES

Based on sections 249, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 310, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 249 and 252 of title 2, U.S.C., 1940 ed., The Congress, with changes in arrangement and phraseology necessary to effect consolidation.

Words "or both" were added to conform to the almost universal formula of the punishment provisions of this title.

CROSS REFERENCES

Definitions of terms applicable to this section, see section 591 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 3401 of this title.

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Feb. 7, 1972, Pub. L. 92-225, title II, § 202, 86 Stat. 9; Oct. 2, 1976, Pub. L. 94-453, § 3, 90 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61b, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 3, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61b and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94-453 substituted $10,000 for $1,000 maximum allowable fine.

1972—Pub. L. 92-225 deleted reference to "work," following "position,", inserted reference to "contract, appointment," following "compensation," and to "or any special consideration in obtaining any such benefit," following "Act of Congress,", and substituted "in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office" for "in any election".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-225 effective on Dec. 31, 1971, or sixty days after date of enactment [Feb. 7, 1972], whichever is later, see section 408 of Pub. L. 92-225, set out as a note under section 431 of Title 2, The Congress.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 591, 3401 of this title.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than $10,000, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 721; Oct. 2, 1976, Pub. L. 94-453, § 1, 90 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61c, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 4, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61c and 61g of title 18, U.S.C., 1940 ed.

The words "except as required by law" were used as sufficient to cover the reference to the exception made to the provisions of subsection (b), section 61h of title 18, U.S.C., 1940 ed., which expressly prescribes the circumstances under which a person may be lawfully deprived of his employment and compensation therefor.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94-453 eliminated provisions relating to deprivations based upon race, creed, and color which are now set out in section 246 of this title, replaced term "political activity" with more precise terms and definitions, and raised the amount of maximum fine from $1,000 to $10,000.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title.

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than three years or both.

(June 25, 1948, ch. 645, 62 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 208, 212 (Mar. 4, 1909, ch. 321, §§ 118, 122, 35 Stat. 1110; Feb. 28, 1925, ch. 368, § 312, 43 Stat. 1073).

This section consolidates sections 208 and 212 of title 18, U.S.C., 1940 ed.

This section, like section 201 of this title, was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words "or any department or agency thereof." (See definitive section 6 of this title.)

The punishment provision was taken from section 212 of title 18, U.S.C., 1940 ed., which, by reference, made the punishment applicable to the crime described in this section.

Changes were made in phraseology.

DELEGATE FROM DISTRICT OF COLUMBIA; EFFECTIVE DATE

Provisions of Federal Corrupt Practices Act applicable, effective Sept. 22, 1970, with respect to Delegate to House of Representatives from District of Columbia in same manner and to same extent as applicable with respect to a Representative, see sections 204(a), 206(b) of Pub. L. 91-405, title II, Sept. 22, 1970, 84 Stat. 852, set out as notes under section 25 of Title 2, The Congress.

CROSS REFERENCES

Definitions of terms applicable to this section, see section 591 of this title.

Place of solicitation, see section 603 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 603, 606 of this title; title 5 section 3374; title 12 section 1457; title 29 section 928.

§ 603. Place of solicitation

Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or arsenal, solicits or receives any contribution of money or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Oct. 31, 1951, ch. 655, § 20(b), 65 Stat. 718.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 209, 212 (Mar. 4, 1909, ch. 321, §§ 119, 122, 35 Stat. 1110).

This section consolidates sections 209 and 212 of title 18, U.S.C., 1940 ed., without change of substance.

To eliminate ambiguity resulting from use of identical words in reference "officer or employee of the United States mentioned in section 208 of this title" as those appearing in section 208 of title 18, U.S.C., 1940 ed., now section 602 of this title, words "person mentioned in section 602 of this title" were inserted.

Words "from any such person" were inserted after "purpose", so as to make it clear that the section does not embrace State employees in its provisions. Some Federal agencies are located in State buildings occupied by State employees.

The punishment provision was derived from section 212 of title 18, U.S.C., 1940 ed. (See reviser's note under section 602 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1951—Act Oct. 31, 1951, struck out "from any such person" which followed "purpose".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 12 section 1457.

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61d, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 5, 8, 53 Stat. 1148).

This section consolidates sections 61d and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61e, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 6, 8, 53 Stat. 1148).

This section consolidates sections 61e and 61g of title 18, U.S.C., 1940 ed.

Reference to persons aiding or assisting, contained in words "or to aid or assist in furnishing or disclosing" was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 210, 212 (Mar. 4, 1909, ch. 321, §§ 120, 122, 35 Stat. 1110).

This section consolidates sections 210 and 212 of title 18, U.S.C., 1940 ed.

Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 12 section 1457.

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account

of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 211, 212 (Mar. 4, 1909, ch. 321, §§ 121, 122, 35 Stat. 1110).

This section consolidates sections 211 and 212 of title 18, U.S.C., 1940 ed.

This section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words "or any department or agency thereof." (See definitive section 6, and reviser's note under section 201 of this title.)

Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 12 section 1457.

[§ 608. Repealed. Pub. L. 94-283, title II, § 201(a), May 11, 1976, 90 Stat. 496]

Section, acts June 25, 1948, ch. 645, 62 Stat. 723; Feb. 7, 1972, Pub. L. 92-225, title II, § 203, 86 Stat. 9; Oct. 15, 1974, Pub. L. 93-443, title I, § 101(a), (b), 88 Stat. 1263, 1266, set limitations on campaign contributions and expenditures. See section 441a of Title 2, The Congress.

SAVINGS PROVISIONS

Repeal of this section by Pub. L. 94-283 not to release or extinguish any penalty, forfeiture, or liability incurred under this section, with this section to be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, see section 114 of Pub. L. 94-283, set out as a note under section 441 of Title 2, The Congress.

[§ 609. Repealed. Pub. L. 92-225, title II, § 204, Feb. 7, 1972, 86 Stat. 10]

Section, act June 25, 1948, ch. 645, 62 Stat. 723, prescribed maximum contributions and expenditures limitation of $3,000,000 for any calendar year.

EFFECTIVE DATE OF REPEAL

Section repealed effective on Dec. 31, 1971, or sixty days after date of enactment [Feb. 7, 1972], whichever is later, see section 408 of Pub. L. 92-225, set out as an Effective Date note under section 431 of Title 2, The Congress.

[§§ 610 to 617. Repealed. Pub. L. 94-283, title II, § 201(a), May 11, 1976, 90 Stat. 496]

Section 610, acts June 25, 1948, ch. 645, 62 Stat. 723; May 24, 1949, ch. 139, § 10, 63 Stat. 90; Oct. 31, 1951, ch. 655, § 20(c), 65 Stat. 718; Feb. 7, 1972, Pub. L. 92-225, title II, § 205, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93-443, title I, § 101(e)(1), 88 Stat. 1267, prohibited campaign contributions or expenditures by national banks, corporations, and labor organizations. See section 441b of Title 2, The Congress.

Section 611, acts June 25, 1948, ch. 645, 62 Stat. 724; Feb. 7, 1972, Pub. L. 92-225, title II, § 206, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93-443, title I, §§ 101(e)(2), 103, 88 Stat. 1267, 1272, prohibited campaign contributions by government contractors. See section 441c of Title 2, The Congress.

Section 612, acts June 25, 1948, ch. 645, 62 Stat. 724; Aug. 25, 1950, ch. 784, § 2, 64 Stat. 475; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(7), 84 Stat. 777, regulated the publication and distribution of political statements. See section 441d of Title 2, The Congress.

Section 613, added Pub. L. 89-486, § 8(a), July 4, 1966, 80 Stat. 248, and amended Pub. L. 93-443, title I, § 101(d)(1) to (3), (4)(A), (e)(3), Oct. 15, 1974, 88 Stat. 1267, prohibited campaign contributions by foreign nationals. See section 441e of Title 2, The Congress.

Section 614, added Pub. L. 93-443, title I, § 101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited the making of campaign contributions in the name of another. See section 441f of Title 2, The Congress.

Section 615, added Pub. L. 93-443, title I, § 101(f)(1), Oct. 15, 1974, 88 Stat. 1268, placed limitations on contributions of currency. See section 441g of Title 2, The Congress.

Section 616, added Pub. L. 93-443, title I, § 101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited the acceptance of excessive honorariums. See section 441i of Title 2, The Congress.

Section 617, added Pub. L. 93-443, title I, § 101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited the fraudulent misrepresentation of campaign authority. See section 441h of Title 2, The Congress.

SAVINGS PROVISIONS

Repeal of sections by Pub. L. 94-283 not to release or extinguish any penalty, forfeiture, or liability incurred under such sections, with each section to be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, see section 114 of Pub. L. 94-283, set out as a note under section 441 of Title 2, The Congress.

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.
641. Public money, property or records.
642. Tools and materials for counterfeiting purposes.
643. Accounting generally for public money.
644. Banker receiving unauthorized deposit of public money.
645. Court officers generally.
646. Court officers depositing registry moneys.
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655. Theft by bank examiner.
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657. Lending, credit and insurance institutions.
658. Property mortgaged or pledged to farm credit agencies.
659. Interstate or foreign shipments by carrier; State prosecutions.
660. Carrier's funds derived from commerce; State prosecutions.
661. Within special maritime and territorial jurisdiction.
662. Receiving stolen property, within special maritime and territorial jurisdiction.
663. Solicitation or use of gifts.
664. Theft or embezzlement from employee benefit plan.
665. Theft or embezzlement from manpower funds; improper inducement.

AMENDMENTS

1973—Pub. L. 93-203, title VII, § 711(b), formerly title VI, § 611(b), Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, added item 665.

1966—Pub. L. 89-654, § 1(e), Oct. 14, 1966, 80 Stat. 904, substituted "shipments by carrier" for "baggage, express or freight" in item 659.

1962—Pub. L. 87-420, § 17(b), Mar. 20, 1962, 76 Stat. 42, added item 664.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Application of general penal statutes relating to larceny, embezzlement, or conversion of public moneys or property of the United States, to moneys and property of Saint Lawrence Seaway Development Corporation, see section 990 of Title 33, Navigation and Navigable Waters.

CROSS REFERENCES

Bankruptcy—
Liability for embezzlement or misappropriation not discharged, see section 35 of Title 11, Bankruptcy.
Trustee, receiver or officer, embezzlement of property belonging to estate of bankrupt, see section 153 of this title.

Coins, embezzlement of metals, see section 332 of this title.

Commodity Credit Corporation, embezzlement or stealing money, etc., see section 714m of Title 15, Commerce and Trade.

Consular officers as guilty of embezzlement, see sections 1179, 1198 of Title 22, Foreign Relations and Intercourse.

Evidence—
Account as evidence of embezzlement, see section 3497 of this title.
Refusal to make and file accountings or reports concerning money or property of World War veterans as evidence of embezzlement, see section 3501 of Title 38, Veterans' Benefits.
Refusal to pay as evidence of embezzlement, see section 3487 of this title.

Extradition of fugitives from country under control of United States, see section 3185 of this title.

Foreign banking corporations, embezzlement of moneys etc. by officers, employees and receivers, see section 630 of Title 12, Banks and Banking.

Indians—
Jurisdiction of offenses committed in Indian country, see section 3242 of this title.
Larceny in Indian country, see section 1153 of this title.

Investment companies, embezzlement or stealing moneys, see section 80a-36 of Title 15, Commerce and Trade.

Merchant seamen, punishment for embezzlement of ship's stores or cargo, see section 701 of Title 46, Shipping.

Officers of United States, civil, military, or naval, embezzlement of public or private money or property as misdemeanor, see section 210 of Title 50, War and National Defense.

Postal Service—
Letters or other correspondence, embezzlement of, see section 1702 of this title.
Letters or other correspondence, embezzlement or stealing by postmaster or Postal Service employee, see section 1709 of this title.
Letters or other correspondence, embezzlement or stealing, or receipt of embezzled or stolen mail matter, see section 1708 of this title.
Mail keys or locks, embezzlement or stealing of, see section 1704 of this title.
Misappropriation of postal funds as embezzlement, see section 1711 of this title.
Newspapers, stealing by postmaster or Postal Service employee, see section 1710 of this title.
Post office, breaking into with intent to commit larceny, see section 2115 of this title.
Postal savings, embezzlement laws as applicable, see section 1691 of this title.
Property used by Postal Service, embezzlement or stealing of, see section 1707 of this title.

Robbery and burglary, see section 2111 et seq. of this title.

Stolen property, see section 2311 et seq. of this title.

Tennessee Valley Authority, application of penal statutes relating to larceny or embezzlement of public moneys or property of United States, see section 831t of Title 16, Conservation.

Vessel's owner, limitation of liability for embezzlement of merchandise, see section 183 et seq. of Title 46, Shipping.

FEDERAL RULES OF CRIMINAL PROCEDURE

Search and seizure, issuance of warrant to search for and seize property stolen or embezzled in violation of the laws of United States, see rule 41, Appendix to this title.

§ 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(June 25, 1948, ch. 645, 62 Stat. 725.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 82, 87, 100, 101 (Mar. 4, 1909, ch. 321, §§ 35, 36, 47, 48, 35 Stat. 1095, 1096–1098; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197; Nov. 22, 1943, ch. 302, 57 Stat. 591.)

Section consolidates sections 82, 87, 100, and 101 of title 18, U.S.C., 1940 ed. Changes necessary to effect the consolidation were made. Words "or shall willfully injure or commit any depredation against" were taken from said section 82 so as to confine it to embezzlement or theft.

The quoted language, rephrased in the present tense, appears in section 1361 of this title.

Words "in a jail" which followed "imprisonment" and preceded "for not more than one year" in said section 82, were omitted. (See reviser's note under section 1 of this title.)

Language relating to receiving stolen property is from said section 101.

Words "or aid in concealing" were omitted as unnecessary in view of definitive section 2 of this title. Procedural language at end of said section 101 "and such person may be tried either before or after the conviction of the principal offender" was transferred to and rephrased in section 3435 of this title.

Words "or any corporation in which the United States of America is a stockholder" in said section 82 were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

The provisions for fine of not more than $1,000 or imprisonment of not more than 1 year for an offense involving $100 or less and for fine of not more than $10,000 or imprisonment of not more than 10 years, or both, for an offense involving a greater amount were written into this section as more in conformity with the later congressional policy expressed in sections 82 and 87 of title 18, U.S.C., 1940 ed., than the nongra-

duated penalties of sections 100 and 101 of said title 18.

Since the purchasing power of the dollar is less than it was when $50 was the figure which determined whether larceny was petit larceny or grand larceny, the sum $100 was substituted as more consistent with modern values.

The meaning of "value" in the last paragraph of the revised section is written to conform with that provided in section 2311 of this title by inserting the words "face, par, or".

This section incorporates the recommendation of Paul W. Hyatt, president, board of commissioners of the Idaho State Bar Association, that sections 82 and 100 of title 18, U.S.C., 1940 ed., be combined and simplified.

Also, with respect to section 101 of title 18, U.S.C., 1940 ed., this section meets the suggestion of P. F. Herrick, United States attorney for Puerto Rico, that the punishment provision of said section be amended to make the offense a misdemeanor where the amount involved is $50 or less.

Changes were made in phraseology.

CROSS REFERENCES

Concealment, removal or destruction of records, see section 2071 of this title.

Court records or process, theft of, see section 1506 of this title.

Mail matter or postal service equipment, embezzlement or theft, see section 1702 et seq. of this title.

Misappropriation of postal funds, see section 1711 of this title.

Receiver triable before or after principal, see section 3435 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457; title 40 section 491.

§ 642. Tools and materials for counterfeiting purposes

Whoever, without authority from the United States, secretes within, or embezzles, or takes and carries away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or

Whoever, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or

Whoever, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of such papers, instruments, or obligations, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 725.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 269 (Mar. 4, 1909, ch. 321, § 155, 35 Stat. 1117).

Words "bed piece, bed-plate, roll, plate, die, seal, type, or other" were omitted as covered by "tool, implement, or thing."

Minor changes in phraseology were made.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title; title 12 section 1457.

§ 643. Accounting generally for public money

Whoever, being an officer, employee or agent of the United States or of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 726.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 176 (Mar. 4, 1909, ch. 321, § 90, 35 Stat. 1105).

Word "employee" was inserted to avoid ambiguity as to scope of section.

Words "or of any department or agency thereof" were added after the words "United States". (See definitions of the terms "department" and "agency" in section 6 of this title.)

Mandatory punishment provisions phrased in alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

CROSS REFERENCES

Persons to whom section applicable, see section 649 of this title.

Refusal to pay as evidence of embezzlement, see section 3487 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 649 of this title; title 5 section 3374.

§ 644. Banker receiving unauthorized deposit of public money

Whoever, not being an authorized depositary of public moneys, knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law is guilty of embezzlement and shall be fined not more than the amount so embezzled or im-

prisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 726.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 182 (Mar. 4, 1909, ch. 321, § 96, 35 Stat. 1106).

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Changes were made in phraseology.

CROSS REFERENCES

Depositaries of public moneys and financial agents of Government, see section 90 of Title 12, Banks and Banking.

§ 645. Court officers generally

Whoever, being a United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such officer, retains or converts to his own use or to the use of another or after demand by the party entitled thereto, unlawfully retains any money coming into his hands by virtue of his official relation, position or employment, is guilty of embezzlement and shall, where the offense is not otherwise punishable by enactment of Congress, be fined not more than double the value of the money so embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

It shall not be a defense that the accused person had any interest in such moneys or fund.

(June 25, 1948, ch. 645, 62 Stat. 726.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 186 (May 29, 1920, ch. 212, 41 Stat. 630).

The smaller punishment for an offense involving $100 or less was inserted to conform to section 641 of this title which represents a later expression of congressional intent.

Minor changes were made in phraseology.

CROSS REFERENCES

Embezzlement by bankruptcy court officer, see section 153 of this title.

Refusal to pay as evidence of embezzlement, see section 3487 of this title.

§ 646. Court officers depositing registry moneys

Whoever, being a clerk or other officer of a court of the United States, fails to deposit promptly any money belonging in the registry of the court, or paid into court or received by the officers thereof, with the Treasurer or a designated depositary of the United States, in the name and to the credit of such court, or retains or converts to his own use or to the use of another any such money, is guilty of embezzlement and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

(June 25, 1948, ch. 645, 62 Stat. 726.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 185 (Mar. 4, 1909, ch. 321, § 99, 35 Stat. 1106; May 29, 1920, ch. 214, § 1, 41 Stat. 654).

The smaller punishment for an offense involving $100 or less was inserted for the reasons outlined in reviser's notes to sections 641 and 645 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Bribe moneys, deposit in registry of court, see section 3612 of this title.

Depositaries of public moneys and financial agents of Government, see section 90 of Title 12, Banks and Banking.

Moneys paid into court, deposit and withdrawal, see sections 2041, 2042 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Deposit in court, see rule 67, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 647. Receiving loan from court officer

Whoever knowingly receives, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be fined not more than the amount embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 187 (Mar. 4, 1909, ch. 321, § 100, 35 Stat. 1107).

The punishment provision of section 185 of title 18, U.S.C., 1940 ed., now section 646 of this title, was substituted for the words "punished as prescribed in section 185 of this title" and the smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641 and 645 of this title.)

§ 648. Custodians, generally, misusing public funds

Whoever, being an officer or other person charged by any Act of Congress with the safekeeping of the public moneys, loans, uses, or converts to his own use, or deposits in any bank or exchanges for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, is guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 175 (Mar. 4, 1909, ch. 321, § 89, 35 Stat. 1105).

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes in phraseology were made.

CROSS REFERENCES

Persons to whom section applicable, see section 649 of this title.

Refusal to pay as evidence of embezzlement, see section 3487 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 649 of this title.

§ 649. Custodians failing to deposit moneys; persons affected

(a) Whoever, having money of the United States in his possession or under his control, fails to deposit it with the Treasurer or some public depositary of the United States, when required so to do by the Secretary of the Treasury or the head of any other proper department or agency or by the General Accounting Office, is guilty of embezzlement, and shall be fined in a sum equal to the amount of money embezzled or imprisoned not more than ten years, or both; but if the amount embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) This section and sections 643, 648, 650 and 653 of this title shall apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be charged as receivers or depositaries of the same.

(June 25, 1948, ch. 645, 62 Stat. 727.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 177, 178 (Mar. 4, 1909, ch. 321, §§ 91, 92, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Sections were consolidated.

Words "or agency" were inserted after "department." See definition of "agency" in section 6 of this title.

Mandatory punishment provisions made in alternative.

The smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641, 645 of this title.)

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Audit and settlement of accounts, see section 71 et seq. of Title 31, Money and Finance.

§ 650. Depositaries failing to safeguard deposits

If the Treasurer of the United States or any public depositary fails to keep safely all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he is guilty of embezzlement, and shall be fined in a sum equal to the amount of money so embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 174, (Mar. 4, 1909, ch. 321, § 88, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

Mandatory punishment provisions stated in alternative.

The smaller punishment for offenses involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Persons to whom section applicable, see section 649 of this title.

Transfer of duties of assistant treasurers to other officers, see section 476 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 649 of this title.

§ 651. Disbursing officer falsely certifying full payment

Whoever, being an officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the General Accounting Office to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid the full amount specified therein to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, shall be fined in double the amount so withheld or imprisoned not more than two years, or both; but if the amount withheld does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 181 (Mar. 4, 1909, ch. 321, § 95, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

The penalty provided by section 652 of this title, a similar section, was incorporated in this section.

(For explanation of the smaller penalty for an offense involving $100 or less, see reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

§ 652. Disbursing officer paying lesser in lieu of lawful amount

Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, pays to any clerk or other employee of the United States, or of any department or agency thereof, a sum less than that provided by law, and requires such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld or imprisoned not more than two years, or both; but if the amount embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 172 (Mar. 4, 1909, ch. 321, § 86, 35 Stat. 1105).

Words "or of any department or agency thereof," were inserted after "United States" so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Mandatory punishment provision made in alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

§ 653. Disbursing officer misusing public funds

Whoever, being a disbursing officer of the United States, or any department or agency thereof, or a person acting as such, in any manner converts to his own use, or loans with or without interest, or deposits in any place or in any manner, except as authorized by law, any public money intrusted to him; or, for any purpose not prescribed by law, withdraws from the Treasury or any authorized depositary, or transfers, or applies, any portion of the public money intrusted to him, is guilty of embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled or imprisoned not more than ten years, or both; but if the amount embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 728.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 173 (Mar. 4, 1909, ch. 321, § 87, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654).

Words "or any department or agency thereof," were inserted after "United States" so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

Cross References

Persons to whom section applicable, see section 649 of this title.

Property and fiscal officers, see section 708 of Title 32, National Guard.

Section Referred to in Other Sections

This section is referred to in section 649 of this title.

§ 654. Officer or employee of United States converting property of another

Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both; but if the sum embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 728.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 183 (Mar. 4, 1909, ch. 321, § 97, 35 Stat. 1106).

The phrase "Whoever being an officer or agent of the United States or of any department or agency thereof," was substituted for the words "Any officer connected with, or employed in the Internal Revenue Service of the United States * * * And any officer of the United States, or any assistant of such officer," in order to clarify scope of section. (See definitive section 6 and reviser's note thereunder.)

The embezzlement of Government money or property is adequately covered by section 641 of this title.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

Cross References

Postmaster or employee embezzling mail matter, see section 1709 of this title.

Section Referred to in Other Sections

This section is referred to in title 5 section 3374; title 12 section 1457.

§ 655. Theft by bank examiner

Whoever, being a bank examiner or assistant examiner, steals, or unlawfully takes, or unlawfully conceals any money, note, draft, bond, or security or any other property of value in the possession of any bank or banking institution which is a member of the Federal Reserve System or which is insured by the Federal Deposit Insurance Corporation, or from any safe deposit box in or adjacent to the premises of such bank, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount taken or concealed does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as a national bank examiner or Federal Deposit Insurance Corporation examiner.

This section shall apply to all public examiners and assistant examiners who examine

member banks of the Federal Reserve System or banks the deposits of which are insured by the Federal Deposit Insurance Corporation, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

(June 25, 1948, ch. 645, 62 Stat. 728.)

HISTORICAL AND REVISION NOTES

Based on section 593 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, 38 Stat. 272; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Feb. 25, 1927, ch. 191, § 15, 44 Stat. 1232; Aug. 23, 1935, ch. 614, § 326(a), 49 Stat. 715).

Other provisions of section 593 of title 12, U.S.C. 1940 ed., Banks and Banking, are incorporated in sections 217 and 218 of this title.

The words "and shall upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The phrase "bank or banking institution which is a member of the Federal Reserve System or which is insured by the Federal Deposit Insurance Corporation" was substituted for "member bank or insured bank" to avoid the use of a definitive section based on sections 221a, 264(e)(8), and 588a of title 12, U.S.C., 1940 ed., Banks and Banking. Words "banks the deposits of which are insured by the Federal Deposit Insurance Corporation" were substituted for "insured banks" in second paragraph, for the same reason.

Punishment provision harmonized with that of section 656 of this title. (See also, reviser's notes under sections 641 and 645 of this title.)

Changes in phraseology were also made.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System, for violating or permitting violation of this section, see section 503 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 503, 1457.

§ 656. Theft, embezzlement, or misapplication by bank officer or employee

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities intrusted to the custody or care of such bank, or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; and "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(June 25, 1948, ch. 645, 62 Stat. 729.)

HISTORICAL AND REVISION NOTES

Based on sections 592, 597 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. 5209; Dec. 23, 1913, ch. 6, § 22(i), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

Section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, was separated into three sections the first of which, embracing provisions relating to embezzlement, abstracting, purloining, or willfully misapplying moneys, funds, or credits, constitutes part of the basis for this section. Of the other two sections, one section, 334 of this title, relates only to the issuance and circulation of Federal Reserve notes and the other, section 1005 of this title, to false entries or the wrongful issue of bank obligations.

The original section, containing more than 500 words, was verbose, diffuse, redundant, and complicated. The enumeration of banks affected is repeated eight times. The revised section without changing in any way the meaning or substance of existing law, clarifies, condenses, and combines related provisions largely rewritten in matters of style.

The words "national bank" were substituted for "national banking association," the terms being synonymous by definition of section 221 of title 12, U.S.C., 1940 ed., Banks and Banking, written into the last paragraph of this section. This change made possible the use of the term "such bank" in substitution for the words "such Federal Reserve bank, member bank, or such national banking association, or insured bank," in each of seven instances.

The special and separate provisions of the original section relating to embezzlement by national bank receivers or Federal Reserve agents are readily combined in the revised section by including these officers in the initial enumeration of persons at whom the act is directed and by inserting the word "purloins" after "embezzles, abstracts," and the phrase "or any moneys, funds, assets, or securities intrusted to the custody or care," following the words "of such bank".

The last paragraph of the revised section includes the definitions of sections 221 and 264(c) of title 12, U.S.C., 1940 ed., Banks and Banking, made applicable by express provision of the original section. These were written in, with only such changes of phraseology as were necessary, in order to make the revised section complete and self-contained. For meaning of "bank," as used in bank robbery statute, see section 2113 of this title.

Section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, likewise was separated into two parts, one of which was combined with the embezzlement provisions of said section 592 to form this section. The other part was combined with the related provisions of said section 592 to form section 1005 of this title.

It will be noted that section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, was limited to "Whoever, being connected in any capacity with a Federal Reserve bank"; that it enumerated "note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree"; and that it stipulated punishment by fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

In combining these provisions, the words "or connected in any capacity" were written into the new section after the words "employee of," thus making them applicable not only to Federal Reserve banks but to

the other banks as well. The phrase of section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, "or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree," was modified to include the enumeration of like obligations in section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, and to read as follows: "whoever without such authority makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation or mortgage, judgment, or decree". (See section 1005 of this title.)

As thus changed the new section is clear, simple, and unambiguous. The very slight changes of substance that have been noted, were unavoidable if the two sections were to be combined. Without combination any constructive revision of these duplicitous and redundant provisions was impossible. It is believed that the revised sections adequately and correctly represent the intent of Congress as the same can be gathered from the overlapping and confusing enactments. At any rate, the severest criticism of the revised sections is that a person connected with a Federal Reserve bank who violates these sections can at most be punished by a fine of $5,000 or imprisonment of 5 years, or both, whereas under section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, he might have been fined $10,000 or imprisoned 5 years, or both. Obviously an embezzler will rarely be financially able to pay even a $5,000 fine even where such fine is imposed. Certainly if it is an adequate fine for a national bank president it is not too disproportionate for a person "connected in any capacity with a Federal Reserve bank".

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641, 645 of this title.)

The words "shall be deemed guilty of a misdemeanor" were omitted as unnecessary in view of definitive section 1 of this title.

The words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed without conviction.

Words "In any district court of the United States" were omitted as unnecessary since section 3231 of this title gives the district courts jurisdiction of criminal prosecution.

SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 6, 80th Cong.

CROSS REFERENCES

Federal Reserve System, laws applicable on becoming member bank, see section 324 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refered to in title 12 sections 209, 324.

§ 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or by the Administrator of the National Credit Union Administration or any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 11, 63 Stat. 90; July 28, 1956, ch. 773, § 1, 70 Stat. 714; Aug. 21, 1958, Pub. L. 85-699, title VII, § 703, 72 Stat. 698; Oct. 4, 1961, Pub. L. 87-353, § 3(q), 75 Stat. 774; May 25, 1967, Pub. L. 90-19, § 24(a), 81 Stat. 27; Oct. 19, 1970, Pub. L. 91-468, § 4, 84 Stat. 1016.)

HISTORICAL AND REVISION NOTES

1948 Act

Based on sections 1026(b) and 1514(c) of title 7, U.S.C., 1940 ed., Agriculture, and sections 264(u), 984, 1121, 1138d(c), 1311, 1441(c), 1467(c), and 1731(c) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 12B(u), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 31, fourth paragraph, 39 Stat. 382; July 17, 1916, ch. 245, § 211(a), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1459; Mar. 4, 1923, ch. 252, title II, § 216(a), 42 Stat. 1471; Jan. 22, 1932, ch. 8, § 16(c), 47 Stat. 11; July 22, 1932, ch. 522, § 21(c), 47 Stat. 738; Mar. 27, 1933, Ex. Ord. No. 6084; June 13, 1933, ch. 64, § 8(c), 48 Stat. 135; June 16, 1933, ch. 98, § 64(c), 48 Stat. 268; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 27, 1934, ch. 847, § 512(c), 48 Stat. 1265; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 701; July 22, 1937, ch. 517, title IV, § 52(b), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, § 514(c), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

Each of the eleven sections from which this section was derived contained similar provisions relating to embezzlement, false entries, and fraudulent issuance or assignment of obligations with respect to one or more named agencies or corporations.

These were separated and the embezzlement and misapplication provisions of all form the basis of this section, and with one exception the remaining provisions of each section forming the basis for section 1006 of this title. The sole exception was that portion of said section 616(c) of title 15 as to the disclosure of information which now forms section 1904 of this title.

The revised section condenses and simplifies the constituent provisions without change of substance except as in this note indicated.

The punishment in each section was the same except that in section 1026(b) of title 7, U.S.C., 1940 ed., Agriculture, and sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, the maximum fine was $5,000. The revised section adopts the $5,000 maximum. (For same penalty covering similar offense, see section 656 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes to sections 641-645 of this title.)

The enumeration of "moneys, funds, credits, securities, or other things of value" does not occur in any one of the original sections but is an adequate, com-

posite enumeration of the instruments mentioned in each.

References to persons aiding and abetting contained in sections 984, 1121, 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, were omitted as unnecessary, such persons being made principals by section 2 of this title.

The term "receiver" is used in sections 1121 and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, with reference to Federal intermediate banks and agricultural credit corporations, and is undoubtedly embraced in the term "connected in any capacity with," but the phrase "and whoever, being a receiver of any such institution" was inserted in this section to obviate all doubt as to its comprehensive scope.

The suggestion has been made that "private examiners" should be included. These undoubtedly are covered by the words "connected in any capacity with." (See also section 655 of this title.)

The term "or any department or agency of the United States" was inserted in each revised section in order to clarify the sweeping provisions against fraudulent acts and to obviate any possibility of ambiguity by reason of the omission of specific agencies named in the constitutent sections. (See section 6 of this title defining "department and agency." For other verbal changes and deletions see reviser's note under section 656 of this title.)

SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 7, 80th Cong.

1949 ACT

[Section 11] conforms section 657 of title 18, U.S.C., to administrative practice which in turn was modified to comply with congressional policy "not to use the Farmers Home Corporation to carry out the functions and duties provided for in H.R. 5991 [Farmers Home Administration Act of 1946] but to vest the authority in the Secretary of Agriculture to be administered through the Farmers Home Administration as an agency of the Department of Agriculture" (H. Rept. No. 2683, to accompany H.R. 5991, 79th Cong., 2d sess.).

AMENDMENTS

1970—Pub. L. 91-468 added the National Credit Union Administration and its Administrator in the enumeration of institutions.

1967—Pub. L. 90-19 substituted "Department of Housing and Urban Development" for "Federal Housing Administration".

1961—Pub. L. 87-353 struck out "Federal Farm Mortgage Corporation," following "Federal Housing Administration,".

1958—Pub. L. 85-699 included officers, agents or employees of or connected in any capacity with small business investment companies.

1956—Act July 28, 1956, included officers, agents or employees of or connected in any capacity with any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

1949—Act May 24, 1949, made section applicable to "the Secretary of Agriculture acting through the Farmers' Home Administration".

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the said Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL CREDIT UNION ADMINISTRATION

Establishment as independent agency, membership etc., see section 1752 et seq. of Title 12, Banks and Banking.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

ABOLITION OF FARMERS' HOME CORPORATION

Farmers' Home Corporation, created as an agency within the Department of Agriculture by section 1014 of Title 7, Agriculture, was abolished as a result of repeal of such section by Pub. L. 87-128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, functions, etc., see section Ex. Ord. No. 6084 set out preceding section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

Financial control of government corporations, see section 841 et seq. of Title 31, Money and Finance.

Secret Service, detection, arrest and delivery into custody of any person violating this section insofar as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 658. Property mortgaged or pledged to farm credit agencies

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any production credit association organized under sections 1131-1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but

if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 12, 63 Stat. 91; Oct. 31, 1951, ch. 655, § 21, 65 Stat. 718; July 26, 1956, ch. 741, title I, § 109, 70 Stat. 667; Oct. 4, 1961, Pub. L. 87-353, § 3(r), 75 Stat. 774.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(c) and 1514(d) of title 7, U.S.C., 1940 ed., Agriculture, and section 1138d(d) of title 12, U.S.C., 1940 ed., Banks and Banking (June 16, 1933, ch. 98, § 64, 48 Stat. 269; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; July 22, 1937, ch. 517, title IV, § 52(c), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, § 514(d), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

To avoid reference to another section the words "the Farm Credit Administration, any Federal intermediate credit bank, the Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, or any production credit corporation or corporation in which a production credit corporation holds stock, any regional agricultural credit corporation, or any bank for cooperatives" were substituted for the words "or any corporation referred to in subsection (a) of this section."

The punishment provision was completely rewritten. The $2,000 fine of section 1026(c) of title 7, U.S.C., 1940 ed., and the 2-year penalty of that section, section 1514(d) of title 7, U.S.C., 1940 ed., and section 1138(d) of title 12, U.S.C., 1940 ed., were incongruous in juxtaposition with other sections of this chapter and were therefore increased to $5,000 and 5 years. (See sections 656 and 657 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

1949 ACT

[Section 12] conforms section 658 of title 18 U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Legislative History note under section 657 of title 18]).

REFERENCES IN TEXT

Section 1131 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

Sections 1131a, 1131c to 1131g, 1131g-2 to 1131i, 1134 to 1134m of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131a-1 and 1131j of Title 12, included within the reference to sections 1131 to 1134m of Title 12, are omitted from the Code. Section 1131a-1 of Title 12, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts. Section 1131j was covered by former section 1131g-2 of Title 12, prior to its repeal by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131b and 1131g-1 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by act July 26, 1956, ch. 741, title 1, § 105(c), (q), 70 Stat. 665, 666.

AMENDMENTS

1961—Pub. L. 87-353 struck out "Federal Farm Mortgage Corporation," preceding "Federal Crop Insurance Corporation".

1956—Act July 26, 1956, eliminated property of any production credit association in which a Production Credit Corporation holds stock.

1951—Act Oct. 31, 1951, covered all production credit associations instead of only those in which a Production Credit Corporation holds stock.

1949—Act May 24, 1949, made section applicable to "the Secretary of Agriculture acting through the Farmers' Home Administration".

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective January 1, 1957, see section 202(a) of act July 26, 1956, set out as an Effective Date note under section 1027 of Title 12, Banks and Banking.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the said Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF FARMERS' HOME CORPORATION

Farmers' Home Corporation, created as an agency within the Department of Agriculture by section 1014 of Title 7, Agriculture, was abolished as a result of repeal of such section by Pub. L. 87-128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, functions, etc., see Ex. Ord. No. 6084 set out preceding section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 659. Interstate or foreign shipments by carrier; State prosecutions

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels, or whoever buys, receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen—

Shall in each case be fined not more than $5,000 or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. The removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 13, 63 Stat. 91; Oct. 14, 1966, Pub. L. 89-654, § 1(a)-(d), 80 Stat. 904.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., §§ 409, 410, 411 (Feb. 13, 1913, ch. 50, §§ 1, 2, 37 Stat. 670; Feb. 13, 1913, ch. 50, § 3, as added Jan. 28, 1925, ch. 102, 43 Stat. 794; Jan. 28, 1925, ch. 102, 43 Stat. 793, 794; Jan. 21, 1933, ch. 16, 47 Stat. 773, 774; July 24, 1946, ch. 606, 60 Stat. 656.)

This section consolidates sections 409, 410, and 411 of title 18, U.S.C., 1940 ed. First clause of said section 409 was incorporated in section 2117 of this title.

In the paragraph immediately preceding the last paragraph the words "and to which" were added to obviate an inadvertent and incongruous omission in the enactment of act July 24, 1946, ch. 606, § 3, 60 Stat. 657. This is in harmony with corrective legislation pending before the Eightieth Congress.

The definitions of "station house", "depot", "wagon", "automobile", "truck", or "other vehicle", contained in said section 409 of title 18, are omitted as unnecessary.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.) This improvement was suggested by United States Attorney P. F. Herrick, of Puerto Rico. (See reviser's note under section 641 of this title.)

Minor changes were made in phraseology.

1949 Act

This section [section 13] inserts the word, "embezzled" preceding "or stolen" near the ends of the second and fourth paragraphs of section 659 of title 18, U.S.C., to restore the language of the original law from which such section was derived. Also, for clarity, substitutes, "whoever" for "who" preceding "buys" in said fourth paragraph of section 659.

Senate Revision Amendment

The "corrective legislation", referred to in this paragraph, became Act April 16, 1947, ch. 39, 61 Stat. 52, and, as it amended section 411 of title 18, U.S.C., such act was an additional source of this section.

Amendments

1966—Pub. L. 89-654 substituted "shipments by carrier" for "baggage, express, or freight" in the section catchline, added "pipeline system" and "tank or storage facility" and substituted "freight, express, or other property" for "freight or express" in par. 1, provided in par. 8 that the removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property, and, in par. 9, prohibited any construction which indicated an intent on the part of Congress to occupy the field to the exclusion of state laws or to invalidate inconsistent state provisions.

1949—Act May 24, 1949, inserted "embezzled or" preceding "stolen" in second par. and substituted "whoever" for "who" preceding "buys" in fourth par.

Cross References

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

Railroad car entered or seal broken, see section 2117 of this title.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

Federal Rules of Criminal Procedure

Venue, see rules 18 to 22, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

§ 660. Carrier's funds derived from commerce; State prosecutions

Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred but also in any district in which the defendant may have taken or had possession of such moneys, funds, credits, securities, property or assets.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

(June 25, 1948, ch. 645, 62 Stat. 730.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 409, 412 (Feb. 13, 1913, ch. 50, § 1, 37 Stat. 670; Oct. 15, 1914, ch. 323, § 9, 38 Stat. 733; Jan. 28, 1925, ch. 102, 43 Stat. 793; Jan. 21, 1933, ch. 16, 47 Stat. 773; July 24, 1946, ch. 606, 60 Stat. 656).

Section consolidates a portion of section 409 with section 412, both of title 18, U.S.C., 1940 ed. Other provisions of said section 409 are incorporated in sections 659 and 2117 of this title.

Definitive language in section 412 of title 18, U.S.C., 1940 ed., as to offense being a felony was deleted to conform with section 1 of this title. (See reviser's note under section 550 of this title.)

Words "imprisoned" was substituted for "confined in the penitentiary" in section 412 of title 18, U.S.C., 1940 ed., in view of power of Attorney General under section 4082 of this title.

Minimum punishment provision "less than one year nor" in section 412 of title 18, U.S.C., 1940 ed., was omitted for reasons in reviser's note under section 203 of this title.

Maximum fine of $5,000 was substituted for minimum fine of $500 in section 412 of title 18, U.S.C., 1940 ed., as being more consonant with the scheme of penalties and offenses provided by Congress for most sections in this chapter.

Sentence in section 412 of title 18, U.S.C., 1940 ed., "Nothing in this section shall be held to take away or impair the jurisdiction of the several courts under the laws thereof;", was omitted in view of section 3231 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue, see rules 18 to 22, Appendix to this title.

§ 661. Within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a value exceeding $100, or is taken from the person of another, by a fine of not more than $5,000, or imprisonment for not more than five years, or both; in all other cases, by a fine of not more than $1,000 or by imprisonment not more than one year, or both.

If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be the value of the property stolen.

(June 25, 1948, ch. 645, 62 Stat. 731.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 466 (Mar. 4, 1909, ch. 321, § 287, 35 Stat. 1144).

Words "within the special maritime and territorial jurisdiction of the United States" were inserted to conform with section 7 of this title. (See reviser's note under that section.)

The maximum fine and imprisonment provisions were modified and "five years" and "$5,000" substituted for "ten years" and "$10,000" and the sum of $100 was substituted for $50 as more in accord with other sections of this chapter. (See section 641 of this title.)

Minor changes were made in phraseology.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Laws of states adopted for areas within Federal jurisdiction, see section 13 of this title.

Provisions relating to larceny committed within Indian country, see sections 1151, 1153, 3242 of this title.

Special maritime and territorial jurisdiction of the United States defined, see section 7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

§ 662. Receiving stolen property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, buys, receives, or conceals any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than $1,000 or imprisoned not more than three years, or both; but if the amount or value of thing so taken, stolen or embezzled does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 731.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 467 (Mar. 4, 1909, ch. 321, § 288, 35 Stat. 1145).

Same language was inserted as in section 661 of this title for the same reason.

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

This accords with the recommendation of United States Attorney P. F. Herrick of Puerto Rico.

Language as to order of trial was omitted and incorporated in section 3435 of this title.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Laws of States adopted for areas within Federal jurisdiction, see section 13 of this title.

Receiving—

Articles stolen from the mails, see section 1708 of this title.

Goods stolen from interstate or foreign shipments, see section 659 of this title.

Special maritime and territorial jurisdiction of the United States defined, see section 7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

§ 663. Solicitation or use of gifts

Whoever solicits any gift of money or other property, and represents that such gift is being solicited for the use of the United States, with the intention of embezzling, stealing, or purloining such gift, or converting the same to any other use or purpose, or whoever, having come into possession of any money or property which has been donated by the owner thereof for the use of the United States, embezzles, steals or purloins such money or property, or converts the same to any other use or purpose, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 731.)

HISTORICAL AND REVISION NOTES

Based on section 641e of title 50, App. U.S.C., 1940 ed., War and National Defense (Mar. 27, 1942, 3 p. m., E. W. T., c. 199, Title XI, § 1106, 56 Stat. 184).

This section was taken from the Second War Powers Act of 1942, which was temporary legislation. However, the subject matter was so independent of the war effort as to warrant its inclusion in this title as a permanent provision.

Words "shall be guilty of a felony" were omitted. See Reviser's Note under section 550 of this title.

Words "and upon conviction thereof" were omitted as unnecessary since punishment cannot be imposed until a conviction is secured.

§ 664. Theft or embezzlement from employee benefit plan

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

As used in this section, the term "any employee welfare benefit plan or employee pension benefit plan" means any employee benefit plan subject to any provision of title I of the Employee Retirement Income provision of title I of the Employee Returement Income Security Act of 1974.

(Added Pub. L. 87-420, § 17(a), Mar. 20, 1962, 76 Stat. 41, and amended Pub. L. 93-406, title I, § 111(a)(2)(A), Sept. 2, 1974, 88 Stat. 851.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables volume.

AMENDMENTS

1974—Pub. L. 93-406 substituted "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974" for "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act".

EFFECIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031(b)(1) of Title 29.

EFFECTIVE DATE

Section 19 of Pub. L. 87-420 provided that: "The amendments made by this Act [adding sections 664, 1027, and 1954 of this title and sections 308a to 308f of Title 29, Labor, amending sections 302 to 308 and 309 of title 29, and renumbering sections 10 to 12 of Pub. L. 85-536, classified to section 309 of title 29 and as notes under section 301 of title 29] shall take effect ninety days after the enactment of this Act [Mar. 20, 1962], except that section 13 of the Welfare and Pension Plans Disclosure Act [section 308d of title 29] shall take effect one hundred eighty days after such date of enactment [Mar. 20, 1962]."

SHORT TITLE

Section 1 of Pub. L. 87-420 provided that Pub. L. 87-420, which enacted sections 664, 1027, and 1954 of this title and sections 308a to 308f of Title 29, Labor, amended sections 302 to 308 and 309 of title 29, and renumbered sections 10 to 12 of Pub. L. 85-536, classified to section 309 of title 29 and as notes under section 301 of title 29, may be cited as the "Welfare and Pension Plans Disclosure Act Amendments of 1962."

CROSS REFERENCES

Wire or oral communications, authorization for interception to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title; title 29 section 1031.

§ 665. Theft or embezzlement from manpower funds; improper inducement

(a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any agency receiving financial assistance under the Comprehensive Employment and Training Act of 1973 embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance

pursuant to this Act shall be fined not more than $10,000 or imprisoned for not more than two years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(b) Whoever, by threat of procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act of 1973, induces any person to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(Added Pub. L. 93-203, title VII, § 711(a), formerly title VI, § 611(a), Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act of 1973, referred to in text, is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, which is classified principally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables volume.

CHAPTER 33—EMBLEMS, INSIGNIA AND NAMES

Sec.
700. Desecration of the flag of the United States; penalties.
701. Official badges, identification cards, other insignia.
702. Uniform of armed forces and Public Health Service.
703. Uniform of friendly nation.
704. Military medals or decorations.
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712. Misuse of names, words, emblems, or insignia.
713. Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President.
714. "Johnny Horizon" character or name.
715. "The Golden Eagle Insignia".

AMENDMENTS

1974—Pub. L. 93-318, § 8, June 22, 1974, 88 Stat. 245, added item 711a.

1973—Pub. L. 93-147, § 1(b), Nov. 3, 1973, 87 Stat. 555, substituted "Misuse of names, words, emblems, or insignia" for "Misuse of names by collecting agencies to indicate Federal agency" in item 712.

1972—Pub. L. 92-347, § 3(c), July 11, 1972, 86 Stat. 462, added item 715.

1971—Pub. L. 91-651, § 2, Jan. 5, 1971, 84 Stat. 1941, added, "and of the seals of the President and Vice President." following "United States" in item 713.

1970—Pub. L. 91-419, § 4, Sept. 25, 1970, 84 Stat. 871, added item 714.

1968—Pub. L. 90-381, § 2, July 5, 1968, 82 Stat. 291, added item 700.

1966—Pub. L. 89-807, § 1(b), Nov. 11, 1966, 80 Stat. 1525, added item 713.

1959—Pub. L. 86-291, § 3, Sept. 21, 1959, 73 Stat. 570, added item 712.

1952—Act May 23, 1952, ch. 327, § 2, 66 Stat. 92, added item 711.

1950—Act Sept. 28, 1950, ch. 1092, § 1(a), 64 Stat. 1077, added item 710.

1949—Act May 24, 1949, ch. 139, § 14, 63 Stat. 91, inserted "Uniform of armed forces and Public Health Service" in lieu of enumerating the specific branches for section 702.

§ 700. Desecration of the flag of the United States; penalties

(a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) The term "flag of the United States" as used in this section, shall include any flag, standard colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, color, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America.

(c) Nothing in this section shall be construed as indicating an intent on the part of Congress to deprive any State, territory, possession, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

(Added Pub. L. 90-381, § 1, July 5, 1968, 82 Stat. 291.)

CROSS REFERENCES

Penalty for mutilation or use of flag for advertising purposes, see section 3 of Title 4, Flag and Seal, Seat of Government, and the States.

§ 701. Official badges, identification cards, other insignia

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 731.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 76a, 76b (June 29, 1932, ch. 306, §§ 1, 2, 47 Stat. 342; May 22, 1939, ch. 141, 53 Stat. 752).

Sections were consolidated.

The term "department or agency" was substituted for "department or independent office" in two places to embrace all properly constituted agencies as defined in section 6 of this title and to eliminate any possible ambiguity as to scope of section.

Minor changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 702. Uniform of armed forces and Public Health Service

Whoever, in any place within the jurisdiction of the United States or in the Canal Zone, without authority, wears the uniform or a distinctive part thereof, or anything similar to a distinctive part of the uniform of any of the armed forces of the United States, Public Health Service or any auxiliary of such, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 15(a), 63 Stat. 91.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 1393 of title 10, U.S.C., 1940 ed., Army and Air Force, and section 228 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (June 3, 1916, ch. 134, § 125, 39 Stat. 216 (2d paragraph); July 1, 1944, ch. 373, § 510, 58 Stat. 711).

"Auxiliary of such" was inserted to extend protection to the uniforms of any auxiliary corps that may be established.

Fine of "$250" was substituted for "$300" as being more consonant with the penalties provided for similar offenses in this chapter.

Minor changes of phraseology also were made.

1949 ACT

This section [section 15] inserts "armed forces" in the catch line and text of section 702 of title 18, U.S.C., and thereby includes the Air Force which was formerly part of the Army. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]). Also, it incorporates in such section the provisions of act of April 15, 1948 (ch. 188, 62 Stat. 172), which relates to this section as well as to section 1393 of title 10, U.S.C. (one of the sources of such sec. 701), as it existed at the time of the enactment of the revision of title 18 and which was not incorporated in title 18 when the revision was enacted. In this connection specific reference to the Canal Zone, Guam, American Samoa, and the Virgin Islands, as contained in such act of April 15, 1948, were omitted as covered by the phrase, "in any place within the jurisdiction of the United States," as used in this amendment of such section 702 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, inserted "armed forces" in lieu of enumerating specific branches in catchline and text of section, and inserted "in any place within the jurisdiction of the United States or in the Canal Zone".

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Authority to wear uniform of officers or enlisted men of armed forces, see sections 771 to 774 of Title 10, Armed Forces.

Uniforms by Foreign Service of United States permitted in theatre of military operations, see section 803 of Title 22, Foreign Relations and Intercourse.

Wearing of uniforms and insignia of Public Health Service, see section 228 of Title 42, The Public Health and Welfare.

§ 703. Uniform of friendly nation

Whoever, within the jurisdiction of the United States, with intent to deceive or mislead, wears any naval, military, police, or other official uniform, decoration, or regalia of any foreign state, nation, or government with which the United States is at peace, or anything so nearly resembling the same as to be calculated to deceive, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732.)

HISTORICAL AND REVISION NOTES

Based on section 246 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (July 8, 1918, ch. 138, 40 Stat. 821).

Words "upon conviction" were deleted as surplusage, since punishment cannot be imposed until a conviction is secured.

Reference to territories or places subject to jurisdiction of the United States was omitted in view of section 5 of this title defining the term "United States."

Fine of "$250" was substituted for "$300" as being more consonant with the penalties provided for similar offenses in this chapter.

Words "unless such wearing thereof be authorized by such state, nation, or government" were deleted as unnecessary and undesirable since it is unthinkable that a friendly power would authorize such deceit.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 704. Military medals or decorations

Whoever knowingly wears, manufactures, or sells any decoration or medal authorized by Congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration or medal, or any colorable imitation thereof, except when authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 16, 63 Stat. 92.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 1425 of title 10, U.S.C., 1940 ed., Army and Air Force (Feb. 24, 1923, ch. 110, 42 Stat. 1286; Apr. 21, 1928, ch. 392, 45 Stat. 437).

Section was made to cover the decorations and medals of the Navy Department as well as the War Department.

Minor changes were made in phraseology.

1949 Act

This section [section 16] clarifies the wording of section 704 of title 18, U.S.C., to embrace all service decorations awarded to members of the armed forces whether by the Army, Navy, Air Force, or other branch of such forces. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]).

Amendments

1949—Act May 24, 1949, covered all service decorations awarded members of the armed forces by any of the armed services.

§ 705. Badge or medal of veterans' organizations

Whoever knowingly manufactures, reproduces, sells or purchases for resale, either separately or on or appended to, any article of merchandise manufactured or sold, any badge, medal, emblem, or other insignia or any colorable imitation thereof, of any veterans' organization incorporated by enactment of Congress, or of any organization formally recognized by any such veterans' organization as an auxiliary of such veterans' organization, or knowingly prints, lithographs, engraves or otherwise reproduces on any poster, circular, periodical, magazine, newspaper, or other publication, or circulates or distributes any such printed matter bearing a reproduction of such badge, medal, emblem, or other insignia or any colorable imitation thereof, except when authorized under rules and regulations prescribed by any such organization, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; Aug. 4, 1950, ch. 578, 64 Stat. 413.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 76e (June 25, 1940, ch. 426, 54 Stat. 571).

Words beginning the section are from the punishment provision of last sentence which was itself rewritten without surplusage.

Changes were made in phraseology.

Amendments

1950—Act Aug. 4, 1950, brought within the protection of this section emblems, badges, or insignia of auxiliary organizations of veteran's organizations incorporated by an act of Congress.

§ 706. Red Cross

Whoever wears or displays the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross; or

Whoever, whether a corporation, association or person, other than the American National Red Cross and its duly authorized employees and agents and the sanitary and hospital authorities of the armed forces of the United States, uses the emblem of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof or the words "Red Cross" or "Geneva Cross" or any combination of these words—

Shall be fined not more than $250 or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such emblem, sign, insignia or words which was lawful on the date of enactment of this title.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 17, 63 Stat. 92.)

Historical and Revision Notes

1948 Act

Based on section 4 of title 36, Patriotic Societies and Observances (Jan. 5, 1905, ch. 23, § 4, 33 Stat. 600; June 23, 1910, ch. 372, § 1, 36 Stat. 604).

False personation provision in first part of section was omitted here and incorporated in section 917 of this title.

Words of punishment "$250" and "six months" were substituted for "$500" and "one year" respectively as more consonant with penalties provided for similar offenses in this chapter. (See sections 701, 704, 705 of this title.)

Punishment provisions were also changed to omit reference to "misdemeanor" in view of definitive section 1 of this title.

Words "upon conviction thereof" were omitted as surplusage, because punishment can only be imposed after conviction.

Changes were made in phraseology.

1949 Act

This section [section 17] clarifies the wording of section 706 of title 18, U.S.C., to embrace all service sanitary units whether belonging to the Army, Navy, Air Force, or other branches of the Armed services. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]).

Amendments

1949—Act May 24, 1949, included all service sanitary units.

Cross References

Fraudulent use of certain insignia, see section 701 of this title.

§ 707. 4-H club emblem fraudulently used

Whoever, with intent to defraud, wears or displays the sign or emblem of the 4-H clubs, consisting of a green four-leaf clover with stem, and the letter H in white or gold on each leaflet, or any insignia in colorable imitation thereof, for the purpose of inducing the belief that he is a member of, associated with, or an agent or representative for the 4-H clubs; or

Whoever, whether an individual, partnership, corporation or association, other than the 4-H clubs and those duly authorized by them, the representatives of the United States Department of Agriculture, the land grant colleges, and persons authorized by the Secretary of Agriculture, uses, within the United States, such emblem or any sign, insignia, or symbol in colorable imitation thereof, or the words "4-H Club" or "4-H Clubs" or any combination of these or other words or characters in colorable imitation thereof—

Shall be fined not more than $250 or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such emblem, sign, insignia or words which was lawful on the date of enactment of this title.

(June 25, 1948, ch. 645, 62 Stat. 733.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 76c and 76d (June 5, 1939, ch. 184, §§ 1, 2, 53 Stat. 809).

The first provision of section 76c of title 18, U.S.C., 1940 ed., relating to fraudulently pretending to be a member of a 4-H Club was incorporated in section 916 of this title.

The language describing the emblem was transposed.

Unnecessary words were omitted from punishment provision, and "$250" was substituted for "$300" to make the punishment consonant with the penalties provided for similar offenses. (See sections 701, 704, 705 of this title for similar offenses.)

The language of section 76d of title 18, U.S.C., 1940 ed., was rephrased and inserted after "whoever," in the second paragraph.

Minor changes were made in phraseology.

§ 708. Swiss Confederation coat of arms

Whoever, whether a corporation, partnership, unincorporated company, association, or person within the United States, willfully uses as a trade mark, commercial label, or portion thereof, or as an advertisement or insignia for any business or organization or for any trade or commercial purpose, the coat of arms of the Swiss Confederation, consisting of an upright white cross with equal arms and lines on a red ground, or any simulation thereof, shall be fined not more than $250 or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such design or insignia which was lawful on August 31, 1948.

(June 25, 1948, ch. 645, 62 Stat. 733; Oct. 31, 1951, ch. 655, § 21a, 65 Stat. 719.)

Historical and Revision Notes

Based on section 248 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 20, 1936, ch. 635, §§ 1, 2, 49 Stat. 1557).

Reference to "jurisdiction" of the United States was omitted as unnecessary in view of definition of "United States" in section 5 of this title.

Words of punishment "$250" and "six months" were substituted for "$500" and "one year" respectively, as more consonant with penalties for similar offenses in this chapter. (See sections 701, 704, 705 of this title.)

Punishment provision was also changed to omit reference to "misdemeanor" in view of definitive section 1 of this title.

Words "upon conviction" were omitted as surplusage, because punishment can only be imposed after conviction.

Minor changes were made in phraseology.

Amendments

1951—Act Oct. 31, 1951, added second paragraph.

§ 709. False advertising or misuse of names to indicate Federal agency

Whoever, except as permitted by the laws of the United States, uses the words "national", "Federal", "United States", "reserve", or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings or trust business; or

Whoever falsely advertises or represents, or publishes or displays any sign, symbol or advertisement reasonably calculated to convey the impression that a nonmember bank, banking association, firm or partnership is a member of the Federal reserve system; or

Whoever, except as expressly authorized by Federal law, uses the words "Federal Deposit", "Federal Deposit Insurance", or "Federal Deposit Insurance Corporation" or a combination of any three of these words, as the name or a part thereof under which he or it does business, or advertises or otherwise represents falsely by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured or guaranteed by the Federal Deposit Insurance Corporation, or by the United States or by any instrumentality thereof, or whoever advertises that his or its deposits, shares, or accounts are federally insured, or falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which the deposit liabilities of an insured bank or banks are insured by the Federal Deposit Insurance Corporation; or

Whoever falsely advertises or otherwise represents by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured under the Federal Credit Union Act or by the United States or any instrumentality thereof, or, being an insured credit union as defined in that Act falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which shareholdings in such credit union are insured under such Act; or

Whoever, not being organized under chapter 7 of Title 12, advertises or represents that it makes Federal Farm loans or advertises or offers for sale as Federal Farm loan bonds any bond not issued under chapter 7 of Title 12, or uses the word "Federal" or the words "United States" or any other words implying Government ownership, obligation or supervision in advertising or offering for sale any bond, note, mortgage or other security not issued by the Government of the United States under the provisions of said chapter 7 or some other Act of Congress; or

Whoever uses the words "Federal Home Loan Bank" or any combination or variation of these words alone or with other words as a business name or part of a business name, or falsely publishes, advertises or represents by any device or symbol or other means reasonably calculated to convey the impression that he or it is a Federal Home Loan Bank or member of or subscriber for the stock of a Federal Home Loan Bank; or

Whoever uses the words "National Agricultural Credit Corporation" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity not organized under the laws of the United States as a National Agricultural Credit Corporation; or

Whoever uses the words "Federal intermediate credit bank" as part of the business or firm name for any person, corporation, partnership, business trust, association or other business entity not organized as an intermediate credit bank under the laws of the United States; or

Whoever uses as a firm or business name the words "Department of Housing and Urban Development", "Housing and Home Finance Agency", "Federal Housing Administration", "Government National Mortgage Association", "United States Housing Authority", or "Public Housing Administration" or the letters "HUD",

"FHA", "PHA", or "USHA", or any combination or variation of those words or the letters "HUD", "FHA", "PHA", or "USHA" alone or with other words or letters reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely claims that any repair, improvement, or alteration of any existing structure is required or recommended by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, for the purpose of inducing any person to enter into a contract for the making of such repairs, alterations, or improvements, or falsely advertises or falsely represents by any device whatsoever that any housing unit, project, business, or product has been in any way endorsed, authorized, inspected, appraised, or approved by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof; or

Whoever, except with the written permission of the Director of the Federal Bureau of Investigation, knowingly uses the words "Federal Bureau of Investigation" or the initials "F.B.I.," or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the Federal Bureau of Investigation; or

Whoever uses as a firm or business name the words "Reconstruction Finance Corporation" or any combination or variation of these words—

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than $1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

This section shall not make unlawful the use of the word "national" as part of the name of any business or firm engaged in the insurance or indemnity business, whether such firm was engaged in the insurance or indemnity business prior or subsequent to the date of enactment of this paragraph.

A violation of this section may be enjoined at the suit of the United States Attorney, upon complaint by any duly authorized representative of any department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 733; Sept. 21, 1950, ch. 967, § 3(a), 64 Stat. 894; Oct. 31, 1951, ch. 655, § 22, 65 Stat. 719; July 3, 1952, ch. 547, 66 Stat. 321; Aug. 2, 1954, ch. 649, title I, § 131, 68 Stat. 609; Aug. 27, 1954, ch. 1008, 68 Stat. 867; May 25, 1967, Pub. L. 90–19, § 24(b), 81 Stat. 27; Aug. 1, 1968, Pub. L. 90–448, title VIII, § 807(i), 82 Stat. 545; Oct. 19, 1970, Pub. L. 91–468, § 5, 84 Stat. 1016.)

HISTORICAL AND REVISION NOTES

Based on sections 264(v)(1), 583, 584, 585, 586, 587, 1128, 1318, 1441(d), 1731(d) of title 12, U.S.C., 1940 ed., Banks and Banking, section 616(d) of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 1426 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (R.S. § 5243; Dec. 23, 1913, ch. 6, § 12B(v), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 211h, as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1461; Mar. 4, 1923, ch. 252, title II, § 216, 42 Stat. 1471; May 24, 1926, ch. 377, §§ 1–4, 44 Stat. 628; Jan. 22, 1932, ch. 8, § 16(d), 47 Stat. 12; July 22, 1932, ch. 522, § 21, 47 Stat. 738; June 27, 1934, ch. 847, § 512, 48 Stat. 1265; Aug. 23, 1935, ch. 614, §§ 101, 203a, 318, 332, 49 Stat. 684, 704, 712, 719; Apr. 21, 1936, ch. 244, 49 Stat. 1237; Sept. 1, 1937, ch. 896, § 26, 50 Stat. 899; Feb. 3, 1938, ch. 13, §§ 9, 10, 52 Stat. 24, 25; June 28, 1941, ch. 261, § 10, 55 Stat. 365).

Numerous sections were consolidated with changes both of phraseology and substance necessary to effect consolidation.

The proviso of section 585 of said title 12 was omitted, since the consolidated section obviously cannot be construed as forbidding Federal agencies, boards, and corporations from using their legal names. The right to continue the use of a name, lawful on the effective date of this section, is preserved.

Last paragraph is based upon section 587 of said title 12. Words "At the suit of" were substituted for "at the instance of". United States Attorneys are the chief law officers of the districts. *United States* v. *Smith*, 1895, 15 S. Ct. 846, 158 U.S. 346, 39 L. Ed. 1011; *McKay* v. *Rogers*, C. C. A. Okl. 1936, 82 F. 2d 795. Federal courts will not recognize suits on behalf of the United States unless the Government is represented by a United States Attorney. Confiscation cases, La. 1868, 7 Wall. 454, 19 L. Ed. 196.

The words "any duly authorized representative of any department or agency of the United States" were substituted for the enumeration of agencies which may make complaint thus making the provision more flexible and less cumbersome.

This consolidated section reconciles the disparities and inconsistencies of 12 sections; thus providing a harmonious scheme for the punishment of similar offenses.

The punishment provision was drawn from section 587 of title 12, U.S.C., 1940 ed., Banks and Banking, but is in substance and effect the same as in sections 264v(1), 1441(d) and 1731(d) of said title 12, but the civil penalty of $50 per day which was in sections 583, 1128, and 1318 of said title 12, was omitted as inconsistent with later acts dealing with similar offenses. Too often actions to recover civil penalties result in judgments which cannot be collected, and yet as long as they remain uncollected they clog the administration of justice.

It was necessary to substitute a fine in place of a $50 per diem penalty for business entities embraced in sections 583, 1128, and 1318 of said title 12, and fine and

imprisonment for individuals responsible for such violations. Similarly the penalty of $1,000 fine in section 1426 of title 42, The Public Health and Welfare, was changed to permit alternative fine or imprisonment for individuals responsible for violation.

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in text, is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this act to the Code, see Tables volume.

Chapter 7 of Title 12, referred to in text, which contained the Federal Farm Loan Act (act July 17, 1916, ch. 245, 39 Stat. 360) as amended, was classified principally to section 641 et seq. of Title 12, Banks and Banking. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables volume.

"Prior or subsequent to the enactment of this paragraph," referred to in text of the penultimate paragraph, means July 3, 1952.

AMENDMENTS

1970—Pub. L. 91-468 extended prohibition of this section to include practices which would falsely represent that assets are insured by the Federal Credit Union Act.

1968—Pub. L. 90-448, in ninth paragraph, substituted "Government National Mortgage Association" for "Federal National Mortgage Association" in four instances.

1967—Pub. L. 90-19 extended the prohibition of the ninth paragraph to misuse of the names "Department of Housing and Urban Development" and "United States Housing Authority" and symbols "HUD", "PHA", and "USHA".

1954—Act Aug. 27, 1954, brought the use of the name or initials of the Federal Bureau of Investigation within the ban of the section.

Act Aug. 2, 1954, inserted in ninth paragraph references to the Housing and Home Finance Agency, the Federal National Mortgage Association, and FHA, and inserted the provisions relating to false claims made with respect to repairs, alterations, or improvements.

1952—Act July 3, 1952, permitted the use of the word "national" as a part of the name of an insurance or indemnity company in penultimate paragraph.

1951—Act Oct. 31, 1951, substituted in ninth paragraph "Public Housing Administration" in lieu of "United States Housing Authority", and inserted "Public Housing Administration," after "Federal Housing Administration".

1950—Act Sept. 21, 1950, in third paragraph, made subject to the provisions of this section whoever advertises that his or its deposit liabilities, obligations, certificates, or shares are federally insured.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-448 effective from and after a date, no more than 120 days following Aug. 1, 1968, as established by the Secretary of Housing and Urban Development, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(b) of act Sept. 21, 1950, provided that the amendment by section 3(a) of said act Sept. 21, 1950, shall be effective on Jan. 1, 1951.

TRANSFER OF FUNCTIONS

All the functions, powers, and duties of the Housing and Home Finance Agency, the Federal Housing Administration, and the Public Housing Authority were transferred to the Secretary of Housing and Urban Development who was authorized to delegate such functions, powers, and duties to such officers and employees of the Department of Housing and Urban Development as the Secretary may designate, see sections 3534 and 3535 of Title 42, The Public Health and Welfare.

The United States Housing Authority was consolidated with other agencies into the Housing and Home Finance Agency and the name of the authority was changed to Public Housing Administration by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

For creation, succession, and principal office, see section 1717 of Title 12, Banks and Banking.

CROSS REFERENCES

Secret Service powers, detection and arrest of violators, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 710. Cremation urns for military use

Whoever knowingly uses, manufactures, or sells any cremation urn of a design approved by the Secretary of Defense for use to retain the cremated remains of deceased members of the armed forces or an urn which is a colorable imitation of the approved design, except when authorized under regulation made pursuant to law, shall be fined not more than $250 or imprisoned for not more than six months, or both.

(Added Sept. 28, 1950, ch. 1092, § 1(b), 64 Stat. 1077.)

§ 711. "Smokey Bear" character or name

Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly and for profit manufactures, reproduces, or uses the character "Smokey Bear", originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name "Smokey

Bear" shall be fined not more than $250 or imprisoned not more than six months, or both.

The Secretary of Agriculture may specially authorize the manufacture, reproduction, or use of the character "Smokey Bear" for a period not to exceed one hundred and eighty days, expiring no later than one year after the enactment hereof, by any person who, because of plans or commitments made prior to the enactment of this Act, would suffer substantial loss if denied such authorization.

(Added May 23, 1952, ch. 327, § 1, 66 Stat. 92, and amended June 22, 1974, Pub. L. 93-318, § 5, 88 Stat. 245.)

REFERENCES IN TEXT

Words "no later than one year after the enactment hereof" and "prior to the enactment of this Act" referred to in the text, refer to one year from May 23, 1952.

AMENDMENTS

1974—Pub. L. 93-318 inserted "and for profit" following "knowingly" and struck out "as a trade name or in such manner as suggests the character 'Smokey Bear'" following "facsimile thereof, or the name 'Smokey Bear'".

DEPOSIT OF FEES; AVAILABILITY

Deposit of fees collected under regulations governing "Smokey Bear" and availability for use, see section 488a of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 sections 488b-3, 488b-5.

§ 711a. "Woodsy Owl" character, name, or slogan

Whoever, except as authorized under rules and regulations issued by the Secretary, knowingly and for profit manufactures, reproduces, or uses the character "Woodsy Owl", the name "Woodsy Owl", or the associated slogan, "Give a Hoot, Don't Pollute" shall be fined not more than $250 or imprisoned not more than six months, or both.

(Added Pub. L. 93-318, § 6, June 22, 1974, 88 Stat. 245.)

DESCRIPTION OF "WOODSY OWL" CHARACTER

For description of character of "Woodsy Owl" as referred to in this section, see section 488b-3 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 sections 488b-3, 488b-5.

§ 712. Misuse of names, words, emblems, or insignia

Whoever, in the course of collecting or aiding in the collection of private debts or obligations, or being engaged in furnishing private police, investigation, or other private detective services, uses or employs in any communication, correspondence, notice, advertisement, or circular the words "national", "Federal", or "United States", the initials "U.S." or any emblem, insignia, or name, for the purpose of conveying and in a manner reasonably calculated to convey the false impression that such communication is from a department, agency, bureau, or instrumentality of the United States or in any manner represents the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Added Pub. L. 86-291, § 1, Sept. 21, 1959, 73 Stat. 570, and amended Pub. L. 93-147, § 1(a), Nov. 3, 1973, 87 Stat. 554.)

AMENDMENTS

1973—Pub. L. 93-147 substituted "Misuse of names, words, emblems, or insignia" for "Misuse of names by collecting agencies or private detective agencies to indicate Federal agency" in the section catchline and substituted "in the course" and "such communication is from a department" for "being engaged in the business" and "such business is a department" respectively, and struck out "as part of the firm name of such business," following "detective services, uses".

EFFECTIVE DATE

Section 2 of Pub. L. 86-291 provided that: "The provisions of this section shall become effective sixty days from the enactment thereof [Sept. 21, 1959]."

§ 713. Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President

(a) Whoever knowingly displays any printed or other likeness of the great seal of the United States, or of the seals of the President or the Vice President of the United States, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined not more than $250 or imprisoned not more than six months, or both.

(b) Whoever, except as authorized under regulations promulgated by the President and published in the Federal Register, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seals of the President or Vice President, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined not more than $250 or imprisoned not more than six months, or both.

(c) A violation of subsection (a) or (b) of this section may be enjoined at the suit of the Attorney General upon complaint by any authorized representative of any department or agency of the United States.

(Added Pub. L. 89-807 § 1(a), Nov. 11, 1966, 80 Stat. 1525, and amended Pub. L. 91-651, § 1, Jan. 5, 1971, 84 Stat. 1940.)

AMENDMENTS

1971—Pub. L. 91-651 in the section catchline substituted "Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President" for "Use of the great seal of the United States".

Subsec. (a). Pub. L. 91-651 redesignated existing provisions as subsec. (a), and, as so redesignated, expanded prohibition to include likenesses of the seals of the President and Vice President, and added to the enumerated list of prohibited uses for likenesses of the great seal of the United States and for the seals of the

President and Vice President, use in posters, public meetings, or on any building, monument, or stationery.

Subsecs. (b), (c). Pub. L. 91-651 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91-651 provided that: The amendments made by this Act [amending this section] shall not make unlawful any preexisting use of the design of the great seal of the United States or of the seals of the President or Vice President of the United States that was lawful on the date of enactment of this Act [Jan. 5, 1971], until one year after the date of such enactment."

EX. ORD. NO. 11649. REGULATIONS GOVERNING SEALS OF PRESIDENT AND VICE PRESIDENT OF UNITED STATES

Ex. Ord. No. 11649, Feb. 16, 1972, 37 F.R. 3625, as amended by Ex. Ord. No. 11916, May 28, 1976, 41 F.R. 22031, provided:

By virtue to the authority vested in me by section 713(b) of title 18, United States Code, I hereby prescribe the following regulations governing the use of the Seals of the President and the Vice President of the United States:

SECTION 1. Except as otherwise provided by law, the knowing manufacture, reproduction, sale, or purchase for resale of the Seals or Coats of Arms of the President or the Vice President of the United States, or any likeness or substantial part thereof, shall be permitted only for the following uses:

(a) Use by the President or Vice President of the United States;

(b) Use in encyclopedias, dictionaries, books, journals, pamphlets, periodicals, or magazines incident to a description or history of seals, coats of arms, heraldry, or the Presidency or Vice Presidency;

(c) Use in libraries, museums, or educational facilities incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or the Presidency or Vice Presidency;

(d) Use as an architectural embellishment in libraries, museums, or archives established to house the papers or effects of former Presidents or Vice Presidents;

(e) Use on a monument to a former President or Vice President;

(f) Use by way of photographic or electronic visual reproduction in pictures, moving pictures, or telecasts of bona fide news content;

(g) Such other uses for exceptional historical, educational, or newsworthy purposes as may be authorized in writing by the Counsel to the President.

SEC. 2. The manufacture, reproduction, sale, or purchase for resale, either separately or appended to any article manufactured or sold, of the Seals of the President or Vice President, or any likeness or substantial part thereof, except as provided in this Order or as otherwise provided by law, is prohibited.

RICHARD NIXON.

§ 714. "Johnny Horizon" character or name

As used in this Act, the name or character "Johnny Horizon", means the representation of a tall, lean man, with strong facial features, who wears slacks and sport shirt buttoned to the collar (both green, when colored), no tie, a field jacket (red, when colored), boot-type shoes (brown, when colored) and who carries a backpack, which was originated by the Bureau of Land Management, United States Department of the Interior, as the official symbol for a public service antilitter program to maintain the beauty and utility of the Nation's public lands.

Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses the character "Johnny Horizon", or any facsimile thereof, or the name "Johnny Horizon" as a trade name or mark, or in such a manner as suggests the character "Johnny Horizon", so that such use is likely to cause confusion, or to cause mistake, or to deceive, shall be fined not more than $250 or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such emblem, sign, insignia, or words which was lawful on the date of enactment of this Act.

A violation of this section may be enjoined at the suit of the United States attorney, upon complaint by the Secretary of the Interior.

(Added Pub. L. 91-419, § 3, Sept. 25, 1970, 84 Stat. 870.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 91-419, Sept. 25, 1970, 84 Stat. 870, which is classified to section 714 of this title and sections 488b to 488b-2 of Title 31, Money and Finance. For complete classification of this Act to the Code, see Tables volume.

Date of enactment of this Act, referred to in the text, means Sept. 25, 1970, the date on which Pub. L. 91-419 became law.

§ 715. "The Golden Eagle Insignia"

As used in this section, "The Golden Eagle Insignia" means the words "The Golden Eagle" and the representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border) which was originated by the Department of the Interior as the official symbol for Federal recreation fee areas.

Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses "The Golden Eagle Insignia", or any facsimile thereof, in such a manner as is likely to cause confusion, or to cause mistake, or to deceive, shall be fined not more than $250 or imprisoned not more than six months, or both.

The use of any such emblem, sign, insignia, or words which was lawful on the date of enactment of this Act shall be a violation of this section.

A violation of this section may be enjoined at the suit of the Attorney General, upon complaint by the Secretary of the Interior.

(Added Pub. L. 92-347, § 3(b), July 11, 1972, 86 Stat. 461.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in the text, means the date of enactment of Pub. L. 92-347, which was approved July 11, 1972.

CHAPTER 35—ESCAPE AND RESCUE

Sec.
751. Prisoners in custody of institution or officer.
752. Instigating or assisting escape.
753. Rescue to prevent execution.
754. Rescue of body of executed offender.
755. Officer permitting escape.
756. Internee of belligerent nation.
757. Prisoners of war or enemy aliens.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4082 of this title.

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both; or if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined not more than $1,000 or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

(June 25, 1948, ch. 645, 62 Stat. 734; Dec. 30, 1963, Pub. L. 88-251, § 1, 77 Stat. 834; Sept. 10, 1965, Pub. L. 89-176, § 3, 79 Stat. 675; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753h, 909 (May 14, 1930, ch. 274, § 9, 46 Stat. 327; May 27, 1930, ch. 339, § 9, 46 Stat. 390; Aug. 3, 1935, ch. 432, 49 Stat. 513).

Sections 753h and 909 of title 18, U.S.C., 1940 ed., were consolidated. Section 753h is later and more comprehensive. The substance of its provisions was adopted.

References to offenses as felonies or misdemeanors were omitted in view of definitive section 1 of this title. (See also reviser's notes under section 550 of this title.)

Mandatory provision as to separate sentences and order of service was omitted in order to permit court to exercise discretion as to whether sentences should be concurrent or consecutive and to obviate administration problems in enforcement of section.

Words "or employee" were inserted to remove ambiguity as to scope of section.

Reference to "custody or confinement is for extradition" was inserted to avoid possible ambiguity.

Changes were made in phraseology and arrangement.

AMENDMENTS

1968—Subsecs. (a), (b). Pub. L. 90-578 substituted "magistrate" for "commissioner".

1965—Pub. L. 89-176 inserted "or facility" following "institution".

1963—Pub. L. 88-251 designated existing provisions as subsec. (a) and added subsec. (b).

CROSS REFERENCES

Arrests by Bureau of Prisons employees, see section 3050 of this title.

Bureau of Prisons employees, power to arrest without warrant for violations of this section, see section 3050 of this title.

Civil commitment and rehabilitation of narcotic addicts, penalties for escape or rescue from custody, see section 2902 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3050 of this title; title 28 section 2902; title 42 section 3425.

§ 752. Instigating or assisting escape

(a) Whoever rescues or attempts to rescue or instigates, aids or assists the escape, or attempt to escape, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution or facility by his direction, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempted escape of any person in the custody of the Attorney General or his authorized representative, or of any person arrested upon a warrant or other process issued under any law of the United States or from any institution or facility in which he is confined by direction of the Attorney General, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; May 28, 1956, ch. 331, 70 Stat. 216; Dec. 30, 1963, Pub. L. 88-251, § 2, 77 Stat. 834; Sept. 10, 1965, Pub. L. 89-176, § 3, 79 Stat. 675.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 246, 247, 252, 661, 662c, 753i, 910 (R.S. § 5277; Mar. 4, 1909, ch. 321, §§ 141, 143, 35 Stat. 1114; May 14, 1930, ch. 274, § 10, 46 Stat. 327; May 27, 1930, ch. 339, § 10, 46 Stat. 390; Mar.

22, 1934, ch. 73, § 2, 48 Stat. 455; May 18, 1934, ch. 303, § 1, 48 Stat. 782).

Section consolidated escape and rescue provisions of sections 246, 247, 252, 661, 662c, 753i, and 910 of title 18, U.S.C., 1940 ed. Remaining provisions of those sections are in sections 1071, 1072, 1502, 1792, 3183, and 3195 of this title.

No two sections provided the same punishment. Every section except said section 252 made the offense a misdemeanor by providing for fines varying from $500 to $1,000 and terms of imprisonment varying from 6 months to 1 year. Said section 252, representing the latest expression by Congress, provided for 10 years' imprisonment.

The punishment provision was adopted from section 751 of this title, which makes it unlawful for a prisoner to escape from his place of confinement. Thus the same punishment would apply to the person aiding in an escape as to the person escaping.

The language of this section reconciles the conflict by adopting a penalty which is a compromise between the varying provisions.

Reference to "extradition" was inserted to avoid ambiguity and to harmonize section with section 751 of this title.

References to "force" were omitted as well as those to "officer" or "custody." See definition of "Rescue," Black's Law Dictionary, citing 4 Bl. Comm. 131.

Changes were made in phraseology.

AMENDMENTS

1965—Pub. L. 89-176 inserted "or facility" following "institution".

1963—Pub. L. 88-251 designated existing provisions as subsec. (a) and added subsec. (b).

1956—Act May 28, 1956, inserted after the word "escape", the phrase ", or attempt to escape,".

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Arrests by Bureau of Prisons employees, see section 3050 of this title.

Bureau of Prisons employees, power to arrest without warrant for violations of this section, see section 3050 of this title.

Civil commitment and rehabilitation of narcotic addicts, penalties for escape or rescue from custody, see section 2902 of Title 28, Judiciary and Judicial Procedure.

Concealing or harboring an escaped prisoner, see section 1072 of this title.

Introducing dangerous instrumentalities into prisons, see section 1792 of this title.

Rescue of goods, see section 2233 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3050 of this title; title 28 section 2902; title 42 section 3425.

§ 753. Rescue to prevent execution

Whoever, by force, sets at liberty or rescues any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than $25,000 or imprisoned not more than twenty-five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 735.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 248 (Mar. 4, 1909, ch. 321, § 142, 35 Stat. 1114).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

§ 754. Rescue of body of executed offender

Whoever, by force, rescues or attempts to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section 3567 of this title, or by force rescues or attempts to rescue such body from the place where it has been deposited for dissection in pursuance of said section 3567, shall be fined not more than $100 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 249 (Mar. 4, 1909, ch. 321, § 144, 35 Stat. 1114).

Minor changes were made in phraseology.

§ 755. Officer permitting escape

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or magistrate, voluntarily suffers such prisoner to escape, shall be fined not more than $2,000 or imprisoned not more than two years, or both; or if he negligently suffers such person to escape, he shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 244, 662e, 665 (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698; Mar. 4, 1909, ch. 321, §§ 138, 139, 35 Stat. 1113; Mar. 22, 1934, ch. 73, § 4, 48 Stat. 456).

Sections 244, 662e and 665 of title 18, U.S.C., 1940 ed., were consolidated. The two latter sections merely extended application of the former. This section has been greatly condensed by changes in phraseology which do not affect the substance.

Enumeration of "marshal, deputy marshal, ministerial officer, or other person," was omitted as surplusage.

Provision making section applicable to cases of prisoners in custody pending extradition or removal proceedings as well as prisoners convicted of offenses against the United States was likewise omitted as unnecessary.

Changes in phraseology were made.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment in view of the act of June 21, 1947, ch. 111, 61 Stat. 134, which, by amending section 244 of Title 18, U.S.C., became an additional source of this section. The amendment constitutes the last clause of this section. See Senate Report No. 1620, amendment No. 8, 80th Cong.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner".

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 756. Internee of belligerent nation

Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 37 (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223).

Section was divided. Remaining provisions relating to arrest appear in section 3058 of this title.

Minor changes in phraseology were made.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Jurisdiction of offenses, see section 3241 of this title.

Section Referred to in Other Sections

This section is referred to in section 14 of this title; title 22 section 465.

§ 757. Prisoners of war or enemy aliens

Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

The provisions of this section shall be in addition to and not in substitution for any other provision of law.

(June 25, 1948, ch. 645, 62 Stat. 735.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 97b (Apr. 30, 1945, ch. 103, 59 Stat. 101).

The second sentence of section 97b of title 18, U.S.C., 1940 ed., was made a separate paragraph.

CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.
[791. Repealed.]
792. Harboring or concealing persons.
793. Gathering, transmitting or losing defense information.
794. Gathering or delivering defense information to aid foreign government.
795. Photographing and sketching defense installations.
796. Use of aircraft for photographing defense installations.
797. Publication and sale of photographs of defense installations.
798.[1] Disclosure of classified information.
798.[1] Temporary extension of section 794.
799. Violation of regulations of National Aeronautics and Space Administration.

[1] So enacted.

Amendments

1961—Pub. L. 87-369, § 2, Oct. 4, 1961, 75 Stat. 795, deleted item 791.

1958—Pub. L. 85-568, title III, § 304(c)(2), July 29, 1958, 72 Stat. 434, added item 799.

1953—Act June 30, 1953, ch. 175, § 3, 67 Stat. 133, added second item 798.

1951—Act Oct. 31, 1951, ch. 655, § 23, 65 Stat. 719, added item 798.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of offenses under this chapter, see section 2516 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 42 section 402; title 50 section 792a.

[§ 791. Repealed. Pub. L. 87-369, § 1, Oct. 4, 1961, 75 Stat. 795]

Section, act June 25, 1948, ch. 645, 62 Stat. 736, related to the application of the chapter within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States.

§ 792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 736.)

Historical and Revision Notes

Based on section 35 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, § 5, 40 Stat. 219; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79).

Similar harboring and concealing language was added to section 2388 of this title.

Mandatory punishment provision was rephrased in the alternative.

Indictment for Violating This Section and Sections 793, 794; Limitation Period

Act Sept. 23, 1950, ch. 1024, § 19, 64 Stat. 1005, provided that an indictment for any violation of this section and sections 793 and 794 of this title, other than a violation constituting a capital offense, may be found at any time within ten years next after such violation shall have been committed, but that such section 19 shall not authorize prosecution, trial, or punishment for any offense "now" barred by the provisions of existing law.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Federal retirement benefits, forfeiture upon conviction of offenses, described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Harboring and concealing, generally, see section 1071 et seq. of this title.

Jurisdiction of offenses, see section 3241 of this title.

Misprision of felony, see section 4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505.

§ 793. Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(June 25, 1948, ch. 645, 62 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 18, 64 Stat. 1003.)

HISTORICAL AND REVISION NOTES

Based on sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, ch. 72, § 1, 54 Stat. 79).

Section consolidated sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense.

Words "departments or agencies" were inserted twice in conformity with definitive section 6 of this title to eliminate any possible ambiguity as to scope of section.

The words "or induces or aids another" were omitted wherever occurring as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1950—Act Sept. 23, 1950, divided section into subdivisions, added laboratories and stations, and places where material or instruments for use in time of war are the subject of research or development to the list of facilities and places to which subsection (a) applies, made subsection (d) applicable only in cases in which possession, access, or control is lawful, added subsection (e) to take care of cases in which possession, access, or control, is unlawful, made subsection (f) applicable to instruments and appliances, as well as to documents, records, etc., and provided by subsection (g) a separate penalty for conspiracy to violate any provisions of this section.

INDICTMENT FOR VIOLATING THIS SECTION; LIMITATION PERIOD

Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Activities affecting armed forces—
Generally, see section 2387 of this title.
During war, see section 2388 of this title.

Classified information, disclosure by Government official, or other person, penalty for, see section 783 of Title 50, War and National Defense, and section 798 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Veterans' benefits, forfeiture upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 792, 1717 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 sections 782, 795.

§ 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(June 25, 1948, ch. 645, 62 Stat. 737; Sept. 3, 1954, ch. 1261, title II, § 201, 68 Stat. 1219.)

HISTORICAL AND REVISION NOTES

Based on sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 2, 4, 40 Stat. 218, 219).

Section consolidates sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense.

The words "or induces or aids another" were omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The conspiracy provision of said section 34 was also incorporated in section 2388 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Sept. 3, 1954, increased the penalty for peacetime espionage and corrected a deficiency on the sentencing authority by increasing penalty to death or imprisonment for any term of years.

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 798 of this title.

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 133, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which had provided that this section should continue in force until six months after the termination of the National emergency proclaimed by 1950 Proc. No. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, ch. 437, 66 Stat. 137, and Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

INDICTMENT FOR VIOLATING THIS SECTION; LIMITATION PERIOD

Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Classified information, disclosure by Government official or other person, penalty for, see section 783 of Title 50, War and National Defense, and section 798 of this title.

Conspiracy to commit offense generally, see section 371 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Veterans' benefits, forfeiture upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 792, 798, 1717 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505.

§ 795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 737.)

HISTORICAL AND REVISION NOTES

Based on sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 4, 52 Stat. 3, 4).

Section consolidated sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

EX. ORD. NO. 10104. DEFINITIONS OF VITAL MILITARY AND NAVAL INSTALLATIONS AND EQUIPMENT

Ex. Ord. No. 10104, Feb. 1, 1950, 15 F.R. 597, provided:

Now, therefore, by virtue of the authority vested in me by the foregoing statutory provisions, and in the interests of national defense, I hereby define the following as vital military and naval installations or equipment requiring protection against the general dissemination of information relative thereto:

1. All military, naval, or air-force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all military, naval, or air-force installations and equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President, and located within:

(a) Any military, naval, or air-force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.

(b) Any defensive sea area heretofore established by Executive order and not subsequently discontinued by Executive order, and any defensive sea area hereafter established under authority of section 2152 of title 18 of the United States Code.

(c) Any airspace reservation heretofore or hereafter established under authority of section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174) except the airspace reservation established by Executive Order No. 10092 of December 17, 1949.

(d) Any naval harbor closed to foreign vessels.

(e) Any area required for fleet purposes.

(f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.

2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.

3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled "Defining Certain Vital Military and Naval Installations and Equipment."

CROSS REFERENCES

Publication and sale of photographs of defense installations, see section 797 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 796, 797 of this title.

§ 796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 738.)

HISTORICAL AND REVISION NOTES

Based on sections 45, 45a, and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 2, 4, 52 Stat. 3, 4).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Punishment provided by section 795 of this title is repeated, and is from said section 45 of title 50, U.S.C., 1940 ed.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 738.)

HISTORICAL AND REVISION NOTES

Based on sections 45 and 45b, of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 3, 52 Stat. 3).

Punishment provision of section 45 of title 50, U.S.C., 1940 ed., War and National Defense, is repeated. Words "upon conviction" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 798. Disclosure of classified information [1]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or applicance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(Added Oct. 31, 1951, ch. 655, § 24(a), 65 Stat. 719.)

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Disclosure of classified information by Government officer or employee, see section 783 of Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

[1] So enacted. See second section 798 enacted on June 30, 1953, set out below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312; title 38 section 3505.

§ 798. Temporary extension of section 794[1]

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

(Added June 30, 1953, ch. 175, § 4, 67 Stat. 133.)

REFERENCES IN TEXT

Section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in the text, was formerly set out as a note under section 791 of this title and was repealed by section 7 of act June 30, 1953.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in the text, is an erroneous citation. It should refer to Proc. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312.

§ 799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(Added Pub. L. 85-568, title III, § 304(c)(1), July 29, 1958, 72 Stat. 434.)

CODIFICATION

Section was added by subsec. (c)(1) of section 304 of Pub. L. 85-568. Subsecs. (a) and (b) of section 304 are classified to section 2455 of Title 42, The Public Health and Welfare. Subsec. (d) of section 304 is classified to section 1114 of this title. Subsec. (e) of section 304 is classified to section 2456 of title 42.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

[1] So enacted. See first section 798 enacted on Oct. 31, 1951, set out above.

CHAPTER 39—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Sec.
831. Definitions.
832. Transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles.
833. Marking packages containing explosives and other dangerous articles.
834. Regulation by Interstate Commerce Commission.
835. Administration.
836. Transportation of fireworks into State prohibiting sale or use.
[837. Repealed.]

AMENDMENTS

1970—Pub. L. 91-452, title XI, § 1106(b)(2), Oct. 15, 1970, 84 Stat. 960, struck out item 837.

1960—Pub. L. 86-710, Sept. 6, 1960, 74 Stat. 808, substituted "Other Dangerous Articles" for "Combustibles" in the chapter heading, "explosives, radioactive materials, etiologic agents, and other dangerous articles" for "dynamite, powder and fuses" in item 832, "Marking packages contianing explosives and other dangerous articles" for "Transportation of nitroglycerin" in item 833, "Regulation by Interstate Commerce Commission" for "Marking packages containing explosives" in item 834, and "Administration" for "Regulations by Interstate Commerce Commission" in item 835.

Pub. L. 86-449, title II, § 204, May 6, 1960, 74 Stat. 88, added item 837.

1954—Act June 4, 1954, ch. 261, § 2, 68 Stat. 171, added item 836.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 section 136q; title 33 section 1507; title 49 section 1811.

§ 831. Definitions

As used in this chapter—

Unless otherwise indicated, "carrier" means any person engaged in the transportation of passengers or property by land, as a common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended, and officers, agents, and employees of such carriers.

"Person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"For-hire carrier" includes common and contract carriers.

"Shipper" shall be construed to include officers, agents, and employees of shippers.

"Interstate and foreign commerce" means commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country

or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States. The term "United States" means all the States and the District of Columbia.

"State" includes the District of Columbia.

"Detonating fuzes" means fuzes used in military service to detonate the explosive charges of military projectiles, mines, bombs, or torpedoes.

"Fuzes" means devices used in igniting the explosive charges of projectiles.

"Fuses" means the slow-burning fuses used commercially to convey fire to an explosive combustible mass.

"Fusees" means the fusees ordinarily used on steamboats, railroads, and motor carriers as night signals.

"Radioactive materials" means any materials or combination of materials that spontaneously emit ionizing radiation.

"Etiologic agents" means the causative agent of such diseases as may from time to time be listed in regulations governing etiologic agents prescribed by the Interstate Commerce Commission under section 834 of this chapter.

(June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 808; July 27, 1965, Pub. L. 89-95, 79 Stat. 285.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 382 (Mar. 4, 1909, ch. 321, § 232, 35 Stat. 1134; Mar. 4, 1921, ch. 172, 41 Stat. 1444; Oct. 9, 1940, ch. 777, § 6(a), 54 Stat. 1028).

Minor changes in phraseology were made.

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act, set out under section 27 of Title 49 and Tables volume.

AMENDMENTS

1965—Pub. L. 89-95 struck out "other than pipelines," following "by land," in the definition of "carrier".

1960—Pub. L. 86-710 inserted definitions of "carrier", "person", "for-hire carrier", "shipper", "interstate and foreign commerce", "United States", "State", "radioactive materials", and "etiologic agents", and substituted "military service to detonate the explosive charges of military projectiles" for "naval or military service to detonate the high-explosive bursting charges of projectiles" under "detonating fuzes", "explosive" for "bursting" under "fuzes", included motor carriers under "fusees", and deleted "slowly or without danger to the person lighting same" following "mass" under "fuses", and the definition of "primers".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the members, Chairman, offices, and officers thereof relating to explosives and other dangerous articles under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86-613, § 18, formerly 17, July 12, 1960, 74 Stat. 380, as amended Pub. L. 89-756, § 4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91-113, § 4(a), (b)(1), Nov. 6, 1969, 83 Stat. 189, 190, set out as a note under section 1261 of Title 15, Commerce and Trade.

CROSS REFERENCES

Administration by Interstate Commerce Commission, see section 835 of this title.

Carrying explosives on passenger vessels, see section 170 of Title 46, Shipping.

Cooperation of associations and government departments with Interstate Commerce Commission, see section 834 of this title.

Exemption of shipments of radioactive materials, see section 832 of this title.

Explosives or dangerous weapons aboard vessels, see sections 2277 and 2278 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 834, 835 of this title; title 49 section 1655.

§ 832. Transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles

(a) Any person who knowingly transports, carries, or conveys within the United States, any dangerous explosives, such as and including, dynamite, blasting caps, detonating fuzes, black powder, gunpowder, or other like explosive, or any radioactive materials, or etiologic agents, on or in any passenger car or passenger vehicle of any description operated in the transportation of passengers by any for-hire carrier engaged in interstate or foreign commerce, by land, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both: *Provided, however,* That such explosives, radioactive materials, or etiologic agents may be transported on or in such car or vehicle whenever the Interstate Commerce Commission finds that an emergency requires an expedited movement, in which case such emergency movements shall be made subject to such regulations as the Commission may deem necessary or desirable in the public interest in each instance: *Provided further,* That under this section it shall be lawful to transport on or in any such car or vehicle, small quantities of explosives, radioactive materials, etiologic agents, or other dangerous commodities of the kinds, in such amounts, and under such conditions as may be determined by the Interstate Commerce Commission to involve no appreciable danger to persons or property: *And provided further,* That it shall be lawful to transport on or in any such car or vehicle such fusees, torpedoes, rockets, or other signal devices as may be essential to promote safety in the operation of any such car or vehicle on or in which transported. This section shall not prevent the transportation of military forces with their accompanying munitions of war on passenger-equipment cars or vehicles.

(b) No person shall knowingly transport, carry or convey within the United States liquid nitroglycerin, fulminate in bulk in dry condition, or other similarly dangerous explosives, or radioactive materials, or etiologic agents, on or in any car or vehicle of any description operated in the transportation of passengers or property by any carrier engaged in interstate or foreign commerce, by land, except under such rules and regulations as the Commission shall specifically prescribe with respect to the safe transportation of such commodities. The Commission shall from time to time determine and prescribe what explosives are "other similarly dangerous explosives", and may prescribe the route or routes over which such explosives, radioactive materials, or etiologic agents shall be transported. Any person who violates this provision, or any regulation prescribed hereunder by the Interstate Commerce Commission, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) Any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense which is escorted by personnel specially designated by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, for the purpose of national security, shall be exempt from the requirements of sections 831-835 of this chapter and the rules and regulations prescribed thereunder. In the case of any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense, which is not so escorted by specially designated personnel, certification upon the bill of lading by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, that the shipment contains radioactive materials shall be conclusive as to content, and no further description shall be necessary or required; but each package, receptacle, or other container in such unescorted shipment shall on the outside thereof be plainly marked "radioactive materials", and shall not be opened for inspection by the carrier.

(June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 809.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 382, 385, and 386 (Mar. 4, 1909, ch. 321, §§ 232, 235, and 236, 35 Stat. 1134-1136; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6(a), (c), 54 Stat. 1028).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Section consolidates last sentence of said section 385 with said section 386 of title 18, U.S.C., 1940 ed.

The punishment provision for the lesser offense, not involving death or bodily injury, was reduced from $2,000 fine or 18 months' imprisonment, or both, to $1,000 fine or 1-year imprisonment, or both, so as to render the punishment more in consonance with the offense defined and with other sections in this title which define comparable misdemeanors. The former provision for maximum imprisonment of 18 months, with the consequent requirement for prosecution by indictment and the stigma of commission of a felony upon conviction, appeared out of all proportion to the gravity of the offense.

Changes were made in phraseology and arrangement.

Amendments

1960—Pub. L. 86-710 substituted "explosives, radioactive materials, etiologic agents, and other dangerous articles" for "dynamite, powder, and fuses" in the catchline, redesignated existing provisions as subsec. (a), and therein added provisions permitting shipments of proscribed items on passenger cars, in an emergency, under Interstate Commerce Commission regulation, and carriage of such articles in small amounts under prescribed conditions, and of rockets and signal devices necessary to the safe operation of the vehicle, substituted "within the United States, any dangerous explosives" for "within the limits of jurisdiction of the United States, any high explosive", included radioactive materials, and etiologic agents and extended application from common carriers to any for-hire carrier operating passenger cars or vehicles in the transportation of passengers by land, and deleted provisions which made it lawful to transport smokeless powder, primers, non-detonating fuses, fireworks, and samples for laboratory examination each not exceeding one-half pound in weight, nor exceeding twenty samples in a single vehicle, and added subsecs. (b) and (c).

Transfer of Functions

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof relating generally to explosives and other dangerous articles under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

Abolition of the Atomic Energy Commission

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

Cross References

Administration by Interstate Commerce Commission, see section 835 of this title.

Appropriations, see section 170b of Title 46, Shipping.

Carrying explosives on board vessel, see section 2277 of this title.

Carrying explosives on passenger vessels, see section 170 of Title 46, Shipping.

Cooperation of associations and government departments with Interstate Commerce Commission, see section 834 of this title.

Transportation by vessels of gasoline or other inflammables, see section 170 of Title 46, Shipping.

Section Referred to in Other Sections

This section is referred to in sections 834, 835 of this title; title 49 section 1655.

§ 833. Marking packages containing explosives and other dangerous articles

Any person who knowingly delivers to any carrier engaged in interstate or foreign commerce by land or water, and any person who knowingly carries on or in any car or vehicle of any description operated in the transportation

of passengers or property by any carrier engaged in interstate or foreign commerce, by land, any explosive, or other dangerous article, specified in or designated by the Interstate Commerce Commission pursuant to section 834 of this chapter, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or any person who so delivers any such article without informing such carrier in writing of the true character thereof, at the time such delivery is made, or without plainly marking on the outside of every package containing explosives or other dangerous articles the contents thereof, if such marking is required by regulations prescribed by the Interstate Commerce Commission, shall be fined not more than $1,000 or imprisioned not more than one year, or both, and, if the death or bodily injury of any person results from the violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 810.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 384, 385, and 386 (Mar. 4, 1909, ch. 321, §§ 234, 235, and 236, 35 Stat. 1135, 1136; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6(a), (c), 54 Stat. 1028).

Section consolidates last sentence of said section 385 with said sections 384 and 386 of title 18, U.S.C., 1940 ed.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment provision for the lesser offense, not involving death or bodily injury, was reduced from $2,000 fine or 18 months' imprisonment, or both, to $1,000 fine or 1-year imprisonment, or both. (See reviser's note under section 832 of this title.)

Minor changes were made in phraseology.

PRIOR PROVISIONS

Former provisions of this section related to transportation of nitroglycerin, and are now covered by section 832(b) of this title.

AMENDMENTS

1960—Pub. L. 86-710 substituted provisions for marking packages containing explosives and other dangerous articles for provisions relating to transportation of nitroglycerin.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof relating generally to explosives and other dangerous articles under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670. Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

CROSS REFERENCES

Administration by Interstate Commerce Commission, see section 835 of this title.

Appropriations, see section 170b of Title 46, Shipping.

Carrying explosives on board vessel, see section 2277 of this title.

Carrying explosives on passenger vessels, see section 170 of Title 46. Shipping.

Exemption of shipment of radioactive materials, see section 832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 834, 835 of this title; title 49 section 1655.

§ 834. Regulations by Interstate Commerce Commission

(a) The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles, including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

(b) The Commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Before adopting any regulations relating to radioactive materials the Interstate Commerce Commission shall advise and consult with the Atomic Energy Commission.

(c) Such regulations shall be in accord with the best-known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport.

(d) Such regulations, as well as all changes or modifications thereof, shall, unless a shorter time is specified by the Commission, take effect ninety days after their formulation and publication by the Commission and shall be in effect until reversed, set aside, or modified.

(e) In the execution of sections 831-835, inclusive, of this chapter the Commission may utilize the services of carrier and shipper associations, including the Bureau for the Safe Transportation of Explosives and other Dangerous Articles, and may avail itself of the advice and assistance of any department, commission, or board of the Federal Government, and of State and local governments, but no official or employee of the United States shall receive any additional compensation for such service except as now permitted by law.

(f) Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 810.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. §§ 385 and 386 (Mar. 4, 1909, ch. 321, §§ 235 and 236, 35 Stat. 1135, 1136; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6(a), (c), 54 Stat. 1028.)

Section consolidates sections 385 and 386 of title 18, U.S.C., 1940 ed.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment provision for the lesser offense, not involving death or bodily injury, was reduced from $2,000 fine or 18 months' imprisonment, or both, to $1,000 fine or 1-year imprisonment, or both. (See reviser's note under section 832 of this title.)

Changes were made in phraseology.

PRIOR PROVISIONS

Former provisions of this section related to marking packages containing explosives, and are now covered by section 833 of this title.

AMENDMENTS

1960—Pub. L. 86-710 substituted provisions relating to regulations by the Interstate Commerce Commission for provisions relating to marking packages containing explosives.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof relating generally to explosives and other dangerous articles under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Administration by Interstate Commerce Commission, see section 835 of this title.

Etiologic agents defined, see section 831 of this title.

Exemption of shipment of radioactive materials, see section 832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 831, 832, 833, 835 of this title; title 49 section 1655.

§ 835. Administration

(a) The Interstate Commerce Commission is authorized and directed to administer, execute, and enforce all provisions of sections 831-835, inclusive, of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration, and to employ such officers and employees as may be necessary to carry out these functions.

(b) The Commission is authorized to make such studies and conduct such investigations, obtain such information, and hold such hearings as it may deem necessary or proper to assist it in exercising any authority provided in sections 831-835, inclusive, of this chapter. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(c) In administering and enforcing the provisions of sections 831-835, inclusive, of this chapter and the regulations prescribed thereunder the Commission shall have and exercise all the powers conferred upon it by the Interstate Commerce Act, including procedural and investigative powers and the power to examine and inspect records and properties of carriers engaged in transporting explosives and other dangerous articles in interstate or foreign commerce and the records and properties of shippers to the extent that such records and properties pertain to the packing and shipping of explosives and other dangerous articles and the nature of such commodities.

(June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 811; Oct. 15, 1970, Pub. L. 91-452, title II, § 222, 84 Stat. 929.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 383, 385, and 386 (Mar. 4, 1909, ch. 321, §§ 233, 235, and 236, 35 Stat. 1135, 1136; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6, 54 Stat. 1028).

Section consolidates last sentence of section 385 with sections 383 and 386 of title 18, U.S.C., 1940 ed.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment for the lesser offense, not involving death or bodily injury, was reduced from $2,000 fine or 18 months' imprisonment, or both, to $1,000 fine or 1-year imprisonment, or both. (See reviser's note under section 832 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (c), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act, set out under section 27 of Title 49 and Tables volume.

PRIOR PROVISIONS

Former provisions of this section related to regulations by the Interstate Commerce Commission, and are now covered by section 834 of this title.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-452 struck out the provisions relating to the claiming of the privilege against self-incrimination by witnesses subpenaed before the Commission to testify or produce documents, and the applicability of the immunity provisions of the Compulsory Testimony Act, section 46 of Title 49, to such witnesses.

1960—Pub. L. 86-710 substituted provisions relating to administration for provisions relating to regulations by the Interstate Commerce Commission.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date note under section 6001 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof relating generally to explosives and other dangerous articles under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a Savings Provision note under section 6001 of this title.

CROSS REFERENCES

Cooperation of associations and government departments with Interstate Commerce Commission, see section 834 of this title.

Exemption of shipment of radioactive materials, see section 832 of this title.

Immunity of witnesses, see section 6001 et seq. of this title.

Regulations of Commandant of Coast Guard adopting regulations of Interstate Commerce Commission relating to water carrier, see section 170 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 834 of this title; title 49 section 1655.

§ 836. Transportation of fireworks into State prohibiting sale or use

Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective States shall be applied.

As used in this section, the term "State" includes the several States, Territories, and possessions of the United States, and the District of Columbia.

This section shall be effective from and after July 1, 1954.

(Added June 4, 1954, ch. 261, § 1, 68 Stat. 170.)

FIREWORKS FOR AGRICULTURAL PURPOSES

Section 3 of act June 4, 1954, provided that this section should not be effective with respect to—

"(1) the transportation of fireworks into any State or Territory for use solely for agricultural purposes,

"(2) the delivery of fireworks for transportation into any State or Territory for use solely for agricultural purposes, or

"(3) any attempt to engage in any such transportation or delivery for use solely for agricultural purposes, until sixty days have elapsed after the commencement of the next regular session of the legislature of such State or Territory which begins after the date of enactment of this Act [June 4, 1954]."

[§ 837. Repealed. Pub. L. 91-452, title XI, § 1106(b)(1), Oct. 15, 1970, 84 Stat. 960]

Section, Pub. L. 86-449, title II, § 203, May 6, 1960, 74 Stat. 87, related to the illegal use or possession of explosives and threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives. See section 844 of this title.

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

Sec.
841. Definitions.
842. Unlawful acts.
843. Licensing and user permits.[1]
844. Penalties.
845. Exceptions; relief from disabilities.
846. Additional powers of the Secretary.
847. Rules and regulations.
848. Effect on State law.

AMENDMENTS

1970—Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 952, added chapter 40 and items 841 to 848.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 3795.

§ 841. Definitions

As used in this chapter—

(a) "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) "Interstate" or foreign commerce means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. State includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) "Explosive materials" means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, "explosives" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term "explosive" is defined in subsection (j) of such section 844.

(e) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

[1] Analysis does not conform to section catchline.

(f) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) "Importer" means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) "Manufacturer" means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) "Dealer" means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) "Permittee" means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

(k) "Secretary" means the Secretary of the Treasury or his delegate.

(*l*) "Crime punishable by imprisonment for a term exceeding one year" shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) "Licensee" means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) "Distribute" means sell, issue, give, transfer, or otherwise dispose of.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct 15, 1970, 84 Stat. 952.)

EFFECTIVE DATE

Section 1105(a), (b) of Pub. L. 91-452 provided that:

"(a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act [Oct. 15, 1970].

"(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act [Oct. 15, 1970]: sections 841, 844(d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848 and 849 [no section 849 was enacted]."

CONGRESSIONAL DECLARATION OF PURPOSE

Section 1101 of Pub. L. 91-452 provided that: "The Congress hereby declares that the purpose of this title [enacting this chapter amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

MODIFICATION OF OTHER PROVISIONS

Section 1104 of Pub. L. 91-452 provided that:

"Nothing in this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] shall be construed as modifying or affecting any provision of—

"(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

"(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

"(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

"(d) Sections 831 through 836 of title 18, United States Code; or

"(e) Chapter 44 of title 18, United States Code."

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Section 1105(c) of Pub. L. 91-452 provided that: "Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18, who was engaged in such business or operation on the date of enactment of this Act [Oct. 15, 1970] and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 [see Effective Date note set out under this section] may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40."

AUTHORIZATION OF APPROPRIATIONS

Section 1107 of Pub. L. 91-452 provided that: "There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set as notes under this section]."

§ 842. Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly—

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State

in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

(1) a licensee;

(2) a permittee; or

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a)[1] of the Internal Revenue Code of 1954); or

(6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

(i) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 953.)

REFERENCES IN TEXT

Section 4761 of the Internal Revenue Code of 1954, referred to in subsecs. (d)(5) and (i)(3), was classified to section 4761 of Title 26, Internal Revenue Code, and was repealed by Pub. L. 91-513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 201(v) of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(5) and (i)(3), was classified to section 321(v) of Title 21, Food and Drugs, and was repealed by Pub. L. 91-513, title II, § 701(a), Oct. 27, 1970, 84 Stat. 1281.

Section 4721(a) of the Internal Revenue Code of 1954, referred to in subsec. (d)(5), probably should be section 4731(a) of the Internal Revenue Code of 1954, which was classified to section 4731(a) of Title 26, Internal Revenue Code, and repealed by Pub. L. 91-513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4731(a) of the Internal Revenue Code of 1954, referred to in subsec. (i)(3), was classified to section 4731(a) of Title 26, Internal Revenue Code, and was repealed by Pub. L. 91-513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

[1] So in original. Probably should be section 4731(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 844 of this title.

§ 843. Licenses and user permits

(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.

(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 955.)

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Filing of application for a license or permit prior to the effective date of this section as authorizing any person engaged in a business or operation requiring a license or a permit on Oct. 15, 1970 to continue such business or operation pending final action on such application, see section 1105(c) of Pub. L. 91–452, set out as a note under section 841 of this title.

§ 844. Penalties

(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined

not more than $1,000 or imprisoned not more than one year, or both.

(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

(h) Whoever—

(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 956.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (c), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (c), is section 5845(a) of Title 26.

EFFECTIVE DATE

Subsecs. (a) to (c) of this section effective 120 days after Oct. 15, 1970, and subsecs. (d) to (j) of this section effective on Oct. 15, 1970, see section 1105(a), (b), set out as an Effective Date note under section 841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 845, 846, 2516 of this title.

§ 845. Exceptions; relief from disabilities

(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United

States Department of Transportation and agencies thereof;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term "destructive device" in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15. 1970, 84 Stat. 958, and amended Pub. L. 93-639, § 101, Jan. 4, 1975, 88 Stat. 2217.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-639, in par. (5), substituted provisions exempting commercially manufactured black powder in quantities not exceeding fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices for such exemption of black powder in quantities not exceeding five pounds.

SHORT TITLE

Section 1 of Pub. L. 93-639 provided: "That this Act [amending this section and section 921 of this title] may be cited as 'Amendments of 1973 to Federal Law Relating to Explosives'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2052.

§ 846. Additional powers of the Secretary

The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)

§ 847. Rules and regulations

The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 842 of this title.

§ 848. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)

CHAPTER 41—EXTORTION AND THREATS

Sec.
871. Threats against President and successors to the Presidency.
872. Extortion by officers or employees of the United States.
873. Blackmail.

Sec.
874. Kickbacks from public works employees.
875. Interstate communications.
876. Mailing threatening communications.
877. Mailing threatening communications from foreign country.
878. Threats and extortion against foreign officials, official guests, or internationally protected persons.

AMENDMENTS

1976—Pub. L. 94-467, § 9, Oct. 8, 1976, 90 Stat. 2001, added item 878.

1962—Pub. L. 87-829, § 2, Oct. 15, 1962, 76 Stat. 956, substituted "and successors to the Presidency" for ", President-elect, and Vice President", in item 871.

1955—Act June 1, 1955, ch. 115, § 2, 69 Stat. 80, inserted in item 871, "President-elect, and Vice President."

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of extortion, see section 2516 of this title.

§ 871. Threats against President and successors to the Presidency

(a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(b) The terms "President-elect" and "Vice President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2. The phrase "other officer next in the order of succession to the office of President" as used in this section shall mean the person next in the order of succession to act as President in accordance with title 3, United States Code, sections 19 and 20.

(June 25, 1948, ch. 645, 62 Stat. 740; June 1, 1955, ch. 115, § 1, 69 Stat. 80; Oct. 15, 1962, Pub. L. 87-829, § 1, 76 Stat. 956.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 89 (Feb. 14, 1917, ch. 64, 39 Stat. 919).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1962—Pub. L. 87-829 designated existing provisions as subsec. (a), extended the provisions of such subsection to include any other officer next on the order of succession to the office of President and the Vice-President-elect, added subsec. (b), and substituted "and successors to the Presidency" for ", President-elect, and Vice President" in the section catchline.

1955—Act June 1, 1955, included in section and catchline, provision for penalties for threats against the President-elect and the Vice President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 8 section 1251.

§ 872. Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined not more than $5,000 or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $100, he shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Oct. 31, 1951, ch. 655, § 24(b), 65 Stat. 720.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 171 (Mar. 4, 1909, ch. 321, § 85, 35 Stat. 1104).

Words "or any department or agency" were inserted to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

The punishment provided by section 171 of title 18, U.S.C., 1940 ed., of fine of not more than $500 or imprisonment of not more than 1 year, or both, was increased for offenses involving more than $100 to conform to Congressional policy reflected in later Acts. See section 4047(e)(1) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and the punishment provision following paragraph (10) of said subsection.

AMENDMENTS

1951—Act Oct. 31, 1951, changed punctuation to make section applicable not only to persons falsely representing themselves as federal officers or employees at the time of extortion or the attempt thereof, but also to federal officers and employees who attempt or commit extortion under color of office or employment.

CROSS REFERENCES

Extortion by revenue officer or agent, see section 7214 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 873. Blackmail

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740.)

HISTORICAL AND REVISION NOTES

Based upon title 18, U.S.C., 1940 ed., § 250 (Mar. 4, 1909, ch. 321, § 145, 35 Stat. 1114).

Only minor changes were made in phraseology.

§ 874. Kickbacks from public works employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 740.)

Historical and Revision Notes

Based on section 276b of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (June 13, 1934, ch. 482, § 1, 48 Stat. 948).

Slight changes of phraseology were made.

Cross References

Slum clearance and community development and redevelopment projects, application to, see section 1459 of Title 42, The Public Health and Welfare.

Section Referred to in Other Sections

This section is referred to in title 29 section 1111; title 42 sections 1459, 1592i.

§ 875. Interstate communications

(a) Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 408d (May 18, 1934, ch. 300, 48 Stat. 781; May 15, 1939, ch. 133, § 2, 53 Stat. 743).

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Definition of "interstate commerce" was omitted in conformity with definitive section 10 of this title.

Changes were made in phraseology and arrangement.

Cross References

Venue, see sections 3237 and 3239 of this title.

Section Referred to in Other Sections

This section is referred to in section 3239 of this title.

§ 876. Mailing threatening communications

Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnaped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(7), 84 Stat. 777.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 338a (July 8, 1932, ch. 464, § 1, 47 Stat. 649; June 28, 1935, ch. 326, 49 Stat. 427; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Changes in phraseology and arrangement were made.

Amendments

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department" in two instances in first par.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal

Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Venue, see sections 3237 and 3239 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3239 of this title.

§ 877. Mailing threatening communications from foreign country

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnaped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(8), 84 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338b (July 8, 1932, ch. 464, § 2, 47 Stat. 649; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department of the United States" in two instances in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Venue, see sections 3237 and 3239 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3239 of this title.

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

(a) Whoever knowingly and willfully threatens to violate sections 112, 1116, or 1201 by killing, kidnaping, or assaulting a foreign official, official guest, or internationally protected person shall be fined not more than $5,000 or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(b) Whoever in connection with any violation of subsection (a) or actual violation of sections 112, 1116, or 1201 makes any extortionate demand shall be fined not more than $20,000 or imprisoned not more than twenty years, or both.

(c) For the purpose of this section "foreign official", "internationally protected person", and "official guest" shall have the same meanings as those provided in section 1116(a) of this title.

(d) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(Added Pub. L. 94-467, § 8, Oct. 8, 1976, 90 Stat. 2000.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11 of this title.

CHAPTER 42—EXTORTIONATE CREDIT TRANSACTIONS

Sec.
891. Definitions and rules of construction.
892. Making extortionate extensions of credit.
893. Financing extortionate extensions of credit.
894. Collection of extensions of credit by extortionate means.
[895. Repealed.]
896. Effect on State laws.

AMENDMENTS

1970—Pub. L. 91-452, title II, § 223(b), Oct. 15, 1970, 84 Stat. 929, struck out item 895 "Immunity of witnesses".

1968—Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 160, added chapter 42 and items 891 to 896.

§ 891. Definitions and rules of construction

For the purposes of this chapter:

(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

(2) The term "creditor", with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) The term "debtor", with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

(Added Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 160.)

EFFECTIVE DATE

Chapter effective May 29, 1968, see section 504(a) of Pub. L. 90-321.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 201 of Pub. L. 90-321 provided that:

"(a) The Congress makes the following findings:

"(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

"(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evidence stricter than necessary for the protection of constitutional rights.

"(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

"(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purposes of the laws enacted by the Congress on the subject of bankruptcies.

"(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of chapter 42 of title 18 of the United States Code are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy."

ANNUAL REPORT TO CONGRESS BY ATTORNEY GENERAL

Section 203 of Pub. L. 90-321 provided that: "The Attorney General shall make an annual report to Congress of the activities of the Department of Justice in the enforcement of chapter 42 of title 18 of the United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

§ 892. Making extortionate extensions of credit

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

(A) in the jurisdiction within which the debtor, if a natural person, resides or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business

at the time the extension of credit was made.

(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(3) At the time the extension of credit was made, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded $100.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of any of the circumstances described in subsection (b)(1) or (b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

(Added Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 160.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 894, 1961, 2516 of this title.

§ 893. Financing extortionate extensions of credit

Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined not more than $10,000 or an amount not exceeding twice the value of the money or property so advanced, whichever is greater, or shall be imprisoned not more than 20 years, or both.

(Added Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 161.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

§ 894. Collection of extensions of credit by extortionate means

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit, or

(2) to punish any person for the nonrepayment thereof,

shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b)(1) or the circumstances described in section 892(b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

(Added Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 161.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

[§ 895. Repealed. Pub. L. 91-452, title II, § 223(a), Oct. 15, 1970, 84 Stat. 929]

Section, Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 162, related to the immunity from prosecution of any witness compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

SAVINGS PROVISION

Repeal by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

§ 896. Effect on State laws

This chapter does not preempt any field of law with respect to which State legislation would be permissible in the absence of this chapter. No law of any State which would be valid in the absence of this chapter may be held invalid or inapplicable by virtue of the existence of this chapter, and no officer, agency, or instrumentality of any State may be deprived by virtue of this chapter of any jurisdiction over any offense over which it would have jurisdiction in the absence of this chapter.

(Added Pub. L. 90-321, title II, § 202(a), May 29, 1968, 82 Stat. 162.)

CHAPTER 43—FALSE PERSONATION

Sec.
911. Citizen of the United States.
912. Officer or employee of the United States.
913. Impersonator making arrest or search.
914. Creditors of the United States.
915. Foreign diplomats, consuls or officers.
916. 4-H Club members or agents.
917. Red Cross members or agents.

Cross References

Naturalization proceedings; false personation or misuse of papers, see section 1424 of this title.

Visas and permits; false personation, see section 1546 of this title.

§ 911. Citizen of the United States

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742.)

Historical and Revision Notes

Based on subsection (a), paragraph (18) and subsection (d), of section 746, title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), par. (18), and (d), 54 Stat. 1165, 1167).

Section consolidates said provisions of section 746, title 8, U.S.C., 1940 ed., Aliens and Nationality. The word "willfully" was substituted for "knowingly", "$1,000" for "$5,000", and "three years" for "five years", to harmonize with congressional intent evidenced by the other sections of this chapter.

Minor changes were made in phraseology and unnecessary words were omitted.

Cross References

Certificate of citizenship—
Penalty for misuse of, see section 1423 of this title.
Procurement unlawfully, see section 1425 of this title.
Sale or disposal, see section 1427 of this title.
Surrender of canceled certificate, see section 1428 of this title.
Citizenship—
Counterfeiting papers, see section 1426 of this title.
Misuse of papers in proceeding relating to, see section 1424 of this title.
Penalty for demanding or receiving additional fees, see section 1422 of this title.
Penalty for false statements in matters relating to, see section 1015 of this title.
Limitations; offenses not capital, see section 3282 of this title.
Visas and permits, false personation, see section 1546 of this title.

§ 912. Officer or employee of the United States

Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 76 and 123 (Mar. 4, 1909, ch. 321, §§ 32 and 66, 35 Stat. 1095, 1100; Feb. 28, 1938, ch. 37, 52 Stat. 82).

Section consolidates sections 76 and 123 of title 18, U.S.C., 1940 ed. The effect of this consolidation was to increase the punishment for revenue officers from $500 to $1,000 and from 2 years to 3 years, and to rephrase in the alternative the mandatory punishment provision.

This section now applies the same punishment to all officers and agents of the United States found guilty of false personation.

Words "agency or" were inserted to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.) Other words referring to "authority of any corporation owned or controlled by the United States" were omitted for the same reason. (See *Pierce* v. *U.S.*, 1941, 62 S. Ct. 237, 314 U.S. 306, 86 L. Ed. 226.)

The words "with the intent to defraud the United States or any person", contained in said section 76 of title 18, U.S.C., 1940 ed., were omitted as meaningless in view of *United States* v. *Lapowich*, 63 S. Ct. 914.

Changes were made in phraseology.

Federal Forms of Criminal Procedure

Indictment—
Impersonation of Federal Officer, see form 8, Appendix to this title.
Obtaining money by impersonation of Federal Officer, see form 9.

§ 913. Impersonator making arrest or search

Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 77a (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877).

Words "shall be deemed guilty of a misdemeanor" were omitted. (See definitive section 1 of this title.) Words "and upon conviction thereof" preceding "shall be" were omitted as surplusage since punishment cannot be imposed until conviction is secured.

Maximum imprisonment provision was changed from 1 year to 3 years so as to be consistent with sections 911 and 912 of this title, the latter having also been changed to 3 years. There is no sound reason why a uniform punishment should not be prescribed for the offenses defined in these three sections.

Changes were made in phraseology.

§ 914. Creditors of the United States

Whoever falsely personates any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any

person entitled to any annuity, dividend, pension, wages, or other debt due from the United States, and, under color of such false personation, transfers or endeavors to transfer such public stock or any part thereof, or receives or endeavors to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, wages, or other debt, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 78 (Mar. 4, 1909, ch. 321, § 33, 35 Stat. 1095).

Words "prize money" after "pension" were deleted as repealed by act Mar. 3, 1899, ch. 413, 30 Stat. 1007, repealing all laws authorizing prize money distribution.

Mandatory punishment was rephrased in the alternative.

In the punishment provision the words "five years" were substituted for "ten years" to harmonize it with the punishment provisions in sections 287 and 1001 of this title, covering similar offenses. (See reviser's note under section 287 of this title.)

§ 915. Foreign diplomats, consuls or officers

Whoever, with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743.)

HISTORICAL AND REVISION NOTES

Based on section 232 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 2, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80).

Reference to "jurisdiction" of the United States was omitted as unnecessary in view of definition of "United States" in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title.

§ 916. 4–H Club members or agents

Whoever, falsely and with intent to defraud, holds himself out as or represents or pretends himself to be a member of, associated with, or an agent or representative for the 4–H clubs, an organization established by the Extension Service of the United States Department of Agriculture and the land grant colleges, shall be fined not more than $300 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 743.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 76c (June 5, 1939, ch. 184, § 1, 53 Stat. 809).

Section 76c of title 18, U.S.C., 1940 ed., was incorporated in this section and section 707 of this title.

Reference to offense as a misdemeanor was omitted in view of definitive section 1 of this title. Words "upon conviction thereof" were omitted, since criminal punishment can follow only after conviction.

Minor changes were made in phraseology.

CROSS REFERENCES

4–H Club emblem fraudulently used, penalty, see section 707 of this title.

§ 917. Red Cross members or agents

Whoever, within the United States, falsely or fraudulently holds himself out as or represents or pretends himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material, shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 743.)

HISTORICAL AND REVISION NOTES

Based on section 4 of title 36, U.S.C., 1940 ed., Patriotic Societies and Observances (Jan. 5, 1905, ch. 23, § 4, 33 Stat. 600; June 23, 1910, ch. 372, § 1, 36 Stat. 604).

Section 4 of title 36, U.S.C., 1940 ed., Patriotic Societies and Observances, was divided into this section and section 706 of this title.

Reference to "jurisdiction" of the United States was omitted as unnecessary in view of definition of "United States" in section 5 of this title.

Reference to offense as a misdemeanor was omitted in view of definitive section 1 of this title.

Words "upon conviction thereof" were omitted as punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Red Cross, fraudulent wearing or display of sign of, see section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 44—FIREARMS

Sec.
921. Definitions.
922. Unlawful acts.
923. Licensing.
924. Penalties.
925. Exceptions: Relief from disabilities.
926. Rules and regulations.
927. Effect on State law.
928. Separability clause.[1]

AMENDMENTS

1968—Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1214, reenacted chapter analysis without change.

Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 226, added chapter 44 and items 921 to 928.

[1] Analysis does not conform to section catchline.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 922 of this title; title 26 section 4182; title 42 section 3795.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 6-1802 of the District of Columbia Code.

§ 921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the manufacture of firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under

which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(17) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(18) The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 226, and amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub. L. 93–639, § 102, Jan. 4, 1975, 88 Stat. 2217.)

AMENDMENTS

1975—Subsec. (a)(4). Pub. L. 93–639 substituted "to use solely for sporting, recreational or cultural purposes" for "to use solely for sporting purposes".

1968—Subsec. (a). Pub. L. 90–618 added the definitions of the terms "collector", "licensed collector", and "crime punishable by imprisonment for a term exceeding one year", amended the definitions of the terms "person", "whoever", "interstate or foreign commerce", "State", "firearm", "destructive device", "dealer", "indictment", "fugitive from justice", "antique firearm", "ammunition", and "published ordinance", and reenacted without change the definitions of the terms "shotgun", "short-barreled shotgun", "rifle", "short-barreled rifle", "importer", "licensed importer", "manufacturer", "licensed manufacturer", "licensed dealer", "pawnbroker", and "Secretary" or "Secretary of the Treasury".

Subsec. (b). Pub. L. 90–618 substituted provisions determining that a member of the armed forces on active duty is a resident of the State in which his permanent duty station is located for provisions defining the terms "firearm", "destructive device", and "crime punishable by imprisonment for a term exceeding one year".

EFFECTIVE DATE OF 1968 AMENDMENT

Section 105 of Pub. L. 90–618 provided that:

"(a) Except as provided in subsection (b), the provisions of chapter 44 of title 18, United States Code, as amended by section 102 of this title [amending this chapter], shall take effect on December 16, 1968.

"(b) The following sections of chapter 44 of title 18, United States Code, as amended by section 102 of this title shall take effect on the date of the enactment of this title [Oct. 22, 1968]: Sections 921, 922(*l*), 925(a)(1), and 925(d)."

EFFECTIVE DATE

Section 907 of Pub. L. 90–351 provided that: "The amendments made by this title [enacting this chapter and provisions set out as notes under this section and repealing sections 901 to 910 of Title 15, Commerce and Trade] shall be come effective one hundred and eighty days after the date of its enactment [June 19, 1968]; except that repeal of the Federal Firearms Act [sections 901 to 910 of Title 15] shall not in itself terminate any valid license issued pursuant to that Act and any such license shall be deemed valid until it shall expire according to its terms unless it be sooner revoked or terminated pursuant to applicable provisions of law."

SHORT TITLE

Section 1 of Pub. L. 90–618 provided: "That this Act [which enacted sections 5822, 5871 and 5872 of Title 26, Internal Revenue Code, amended this section and sections 922 to 928 of this title, and Appendix to this title, and sections 5801, 5802, 5811, 5812, 5821, 5841 to 5849, 5851 to 5854, 5861, 6806, and 7273 of Title 26, repealed sections 5692 and 6107 of Title 26 omitted sections 5803, 5813, 5814, 5831, 5855, and 5862 of Title 26, and enacted material set out as notes under this section and Appendix to this title, and section 5801 of Title 26] may be cited as the 'Gun Control Act of 1968'."

CONGRESSIONAL FINDINGS AND DECLARATION

Section 101 of Pub. L. 90–618 provided that: "The Congress hereby declares that the purposes of this title [which amended this chapter] is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

Section 901 of Pub. L. 90–351 provided that:

"(a) The Congress hereby finds and declares—

"(1) that there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

"(2) that the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or

consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapon is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;

"(3) that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible;

"(4) that the acquisition on a mail-order basis of firearms other than a rifle or shotgun by nonlicensed individuals, from a place other than their State of residence, has materially tended to thwart the effectiveness of State laws and regulations, and local ordinances;

"(5) that the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the State in which the licensees' places of business are located, has tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms;

"(6) that there is a casual relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior;

"(7) that the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, has contributed greatly to lawlessness and to the Nation's law enforcement problems;

"(8) that the lack of adequate Federal control over interstate and foreign commerce in highly destructive weapons (such as bazookas, mortars, antitank guns, and so forth, and destructive devices such as explosive or incendiary grenades, bombs, missiles, and so forth) has allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern;

"(9) that the existing licensing system under the Federal Firearms Act [former sections 901 to 910 of Title 15, Commerce and Trade] does not provide adequate license fees or proper standards for the granting or denial of licenses, and that this has led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system.

"(b) The Congress further hereby declares that the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15, Commerce and Trade] is to cope with the conditions referred to in the foregoing subsection, and that it is not the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15] to place any undue or unnecessary Federal restrictions or burdens on lawabiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title [enacting this chapter and repealing sections 901 to 910 of Title 15] is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title [enacting this chapter and repealing sections 901 to 910 of Title 15]."

ADMINISTRATION AND ENFORCEMENT BY SECRETARY OF TREASURY

Section 103 of Pub. L. 90-618 provided that: "The administration and enforcement of the amendment made by this title [amending this chapter] shall be vested in the Secretary of the Treasury."

Section 903 of Pub. L. 90-351 provided that: "The administration and enforcement of the amendment made by this title [enacting this chapter and provisions set out as notes under this section] shall be vested in the Secretary of the Treasury."

MODIFICATION OF OTHER LAWS

Section 104 of Pub. L. 90-618 provided that:

"Nothing in this title or the amendment made thereby [amending this chapter] shall be construed as modifying or affecting any provision of—

"(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1954) [section 5801 et seq. of Title 26, Internal Revenue Code];

"(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

"(c) section 1715 of title 18, United States Code, relating to nonmailable firearms."

Section 904 of Pub. L. 90-351 provided that:

"Nothing in this title or amendment made thereby [enacting this chapter and provisions set out as notes under this section] shall be construed as modifying or affecting any provision of—

"(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1954) [section 5801 et seq. of Title 26, Internal Revenue Code]; or

"(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

"(c) section 1715 of title 18, United States Code, relating to nonmailable firearms."

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 845 of this title.

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any fire arm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.[1]

(2) any firearm or ammunition to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was

[1] So in original, the period should probably be a semicolon.

lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

(5) any firearm or ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are ——

———————————————————

Signature ———————— Date ————."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) has been adjudicated as a mental defective or has been committed to any mental institution.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter.

(f) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment transportation, or receipt thereof would be in violation of the provisions of this chapter.

(g) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearms or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammuntion, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 228, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1216.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3) of this section, is December 16, 1968.

Section 5845 of the Internal Revenue Code of 1954, referred to in subsecs. (a)(4) and (b)(4), is classified to section 5845 of Title 26, Internal Revenue Code.

Section 201(v) of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(3), (g)(3), and (h)(3), was classified to section 321(v) of Title 21, Food and Drugs, and was repealed by Pub. L. 91-513, title II, § 701(a), Oct. 27, 1970, 84 Stat. 1281.

Section 4731(a) of the Internal Revenue Code of 1954, referred to in subsecs. (d)(3), (g)(3), (h)(3), was classified to section 4731(a) of Title 26, Internal Revenue Code, and was repealed by Pub. L. 91-513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

AMENDMENTS

1968—Subsec. (a)(1). Pub. L. 90-618 reenacted subsec. (a)(1) without change.

Subsec. (a)(2). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees subject to the provisions of this chapter, eliminated the exemption for the shipment or transportation in interstate or foreign commerce for rifles or shotguns, and added the exemption authorizing an individual to mail a lawfully owned firearm to the specified licensees for the sole purpose of repair or customizing.

Subsec. (a)(3). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, eliminated the exemption for shotguns or rifles purchased or otherwise obtained outside the state of residence of the recipient, struck out the provision making it unlawful for any person to purchase or otherwise obtain outside his state of residence any firearm which it would be unlawful for him to purchase or possess in that state, and provided for exemptions when any person outside of his state of residence acquires a firearm by bequest or interstate succession and transports the firearm or otherwise receives it in his state of residence, if it is lawful for such person to purchase or possess such firearm in his state of residence, when a rifle or shotgun is obtained in conformity with the provisions of subsec. (b)(3) of this section, and when any firearm has been acquired in any state prior to the effective date of this chapter.

Subsec. (a)(4). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, and provided that the transporting of the specified articles be authorized by the Secretary when consistent with public safety and necessity.

Subsec. (a)(5). Pub. L. 90-618 added licensed collectors to the enumerated list of exempted licensees, prohibited the transfer, etc., of any firearm when the transferor has reasonable cause to believe that the transferee resides in a state other than that in which the transferor resides, and substituted provisions which exempted the transfer, transportation, or delivery of firearms incident to a bequest or intestate succession and the loan or rental of firearms to any person for temporary use for lawful sporting purposes for provisions which exempted the transfer of shotguns or rifles and prohibited the transfer, etc., of any firearm which the transferee could not lawfully purchase or possess in accord with the applicable laws, regulations or ordinances of the state or political subdivision in which the transferee resides.

Subsec. (a)(6). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, and extended the provisions to include the acquisition or attempted acquisition of ammunition.

Subsec. (b). Pub. L. 90-618, in the material preceding subsec. (b)(1), added licensed collectors to the enumerated list of licensees.

Subsec. (b)(1). Pub. L. 90-618 substituted provisions making it unlawful to sell or deliver any firearm or

ammunition to any individual who the licensee knows or has reasonable cause to believe is less than 18, and to sell or deliver any firearm, other than a rifle or shotgun, or ammunition, other than ammunition for a rifle or shotgun, to any individual who the licensee knows or has reasonable cause to believe is less than 21, for provisions making it unlawful to sell or deliver any firearm to any individual who the licensee knows or has reasonable cause to believe is less than 21, if the firearm is other than a shotgun or rifle.

Subsec. (b)(2). Pub. L. 90-618 extended the prohibition to include the sale or delivery of ammunition to any person where the purchase or possession by such person of such ammunition would be unlawful, and struck out "or in the locality in which such person resides" following "or other disposition,".

Subsec. (b)(3). Pub. L. 90-618 added the exemptions to the prohibition against the sale or delivery of any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located.

Subsec. (b)(4). Pub. L. 90-618 substituted provisions making it unlawful to sell or deliver any of the specified articles, except as specifically authorized by the Secretary as consistent with public safety and necessity, for provisions making it unlawful to sell or deliver any of the specified articles, unless the transferor has obtained a sworn statement executed by the principal law enforcement officer of the locality in which the transferee resides stating that such person's receipt or possession would not be unlawful, and that the receipt or possession is intended for lawful purposes, with such sworn statement to be retained by the licensee as part of the records required to be kept under this chapter.

Subsec. (b)(5). Pub. L. 90-618 extended the prohibition to include the sale or delivery of ammunition and, in the material following subsec. (b)(5), added licensed collectors to the enumerated list of licensees, and the provision that subsec. (b)(4) shall not apply to a sale or delivery to any research organization designated by the Secretary.

Subsec. (c). Pub. L. 90-618 added subsec. (c). Former subsec. (c) was redesignated as (d).

Subsec. (d). Pub. L. 90-618 redesignated former subsec. (c) as (d), and, as so redesignated, added licensed collectors to the enumerated list of licensees, extended the prohibition against disposal of firearms or ammunition to include the disposal by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution, and added "or ammunition" following "the sale or disposition of a firearm". Former subsec. (d) was redesignated as (f).

Subsec. (e). Pub. L. 90-618 added subsec. (e). Former subsec. (e) was redesignated as (g).

Subsec. (f). Pub. L. 90-618 redesignated former subsec. (d) as (f), and, as so redesignated, extended the prohibition against transportation or delivery to include ammunition. Former subsec. (f) was redesignated as (h).

Subsec. (g). Pub. L. 90-618 redesignated former subsec. (e) as (g), and, as so redesignated, extended the prohibition against the shipment or transportation of firearms or ammunition to include the shipment or transportation by any persons who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to a mental institution. Former subsec. (g) was redesignated as (i).

Subsec. (h). Pub. L. 90-618 redesignated former subsec. (g) as (h), and, as so redesignated, extended the prohibition against the receipt of any firearms or ammunition to include the receipt by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution. Former subsec. (h) was redesignated as (j).

Subsec. (i). Pub. L. 90-618 redesignated former subsec. (g) as (i), and as so redesignated, substituted "that the firearm or ammunition was" for "the same to have been". Former subsec. (i) was redesignated as (k).

Subsec. (j). Pub. L. 90-618 redesignated former subsec. (h) as (j), and, as so redesignated, substituted "which is moving as, which is a part of," for "moving as or which is a part of" and "that the firearm or ammunition was" for "the same to have been". former subsec. (j) was redesignated as (*l*).

Subsec. (k). Pub. L. 90-618 redesignated former subsec. (i) as (k). Former subsec. (k) was redesignated as (m).

Subsec. (*l*). Pub. L. 90-618 redesignated former subsec. (j) as (*l*).

Subsec. (m). Pub. L. 90-618 redesignated former subsec. (k) as (m), and, as so redesignated, added licensed collectors to the enumerated list of licensees.

Change of Name

The Post Office Department, referred to in subsec. (c)(2), has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(c), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, except subsec. (*l*) effective Oct. 22, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

Cross References

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

Section Referred to in Other Sections

This section is referred to in section 923 of this title; title 26 section 4182.

§ 923. Licensing

(a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

(B) of firearms other than destructive devices, a fee of $50 per year; or

(C) of ammunition for firearms other than destructive devices, a fee of $10 per year.

(2) If the applicant is an importer—

(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of $50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

(B) who is a pawnbroker dealing in firearms other than destructive devices, or ammuni-

tion for firearms other than destructive devices, a fee of $25 per year; or

(C) who is not a dealer in destructive devices or a pawnbroker, a fee of $10 per year.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall shall by regulation prescribe. The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license.

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (h) of this chapter.

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application; and

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time.

(2) The Secretary must approve or deny an application for a license within the forty-five-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

(g) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or politi-

cal subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.

(h) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.

(j) This section shall not apply to anyone who engages only in hand loading, reloading, or custom loading ammunition for his own firearm, and who does not hand load, reload, or custom load ammunition for others.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 231, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1221.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-618 struck out "be required to" following "Each applicant shall".

Subsec. (a)(1). Pub. L. 90-618 added "the applicant is" following "If" in the material preceding subpar. (A), substituted "or ammunition for destructive devices," for "and/or ammunition" in subpar. (A), decreased the fee from $500 per year to $50 per year in subpar. (B), and added subpar. (C).

Subsec. (a)(2). Pub. L. 90-618 added "the applicant is" following "If" in the material preceding subpar. (A), substituted "or ammunition for destructive devices," for "and/or ammunition" in subpar. (A), and added the provision for ammunition for firearms other than destructive devices and decreased the fee from $500 per year to $50 per year in subpar. (B).

Subsec. (a)(3). Pub. L. 90-618 added "the applicant is" following "If" in the material preceding subpar. (A), substituted "in destructive devices or ammunition for destructive devices," for "of destructive devices and/or ammunition" in subpar. (A), and added the provision for ammunition for firearms other than destructive devices and decreased the fee from $250 per year to $25 per year in subpar. (B).

Subsec. (b). Pub. L. 90-618 added subsec. (b). Former subsec. (b) was redesignated as (c).

Subsec. (c) Pub. L. 90-618 redesignated former subsec. (b) as (c), and, as so redesignated, made mandatory the requirement that the Secretary issue the appropriate license to a qualified applicant. Former subsec. (c) was redesignated as (d).

Subsec. (d). Pub. L. 90-618 redesignated former subsec. (c) as (d)(1), and in subsec. (d)(1) as so redesignated, made changes in phraseology, added references to section 922(g) and (h) of this chapter in subsec. (d)(1)(B) and to applicants engaged in collecting in subsec. (d)(1)(E)(ii), and added subsec. (d)(2). Former subsec. (d) was redesignated as (g).

Subsec. (e). Pub. L. 90-618 added subsec. (e). Former subsec. (e) was redesignated as (h).

Subsec. (f). Pub. L. 90-618 added subsec. (f). Former subsec. (f) was redesignated as (i).

Subsec. (g). Pub. L. 90-618 redesignated former subsec. (d) as (g), and as so redesignated, added licensed collectors to the enumerated list of licensees subject to the provisions of this section.

Subsec. (h). Pub. L. 90-618 redesignated former subsec. (e) as (h), and, as so redesignated, substituted "subsection (c)" for "subsection (b)".

Subsec. (i). Pub. L. 90-618 redesignated former subsec. (f) as (i), and, as so redesignated, added ", by means of a serial number engraved or cast on the receiver or frame of the weapon," following "shall identify".

Subsec. (j). Pub. L. 90-618 added subsec. (j).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 922 of this title; title 26 section 4182.

§ 924. Penalties

(a) Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined not more than $10,000, or imprisoned not more than then years, or both.

(c) Whoever—

(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States.

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony.

(d) Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable,

extend to seizures and forfeitures under the provisions of this chapter.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 233, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1223; Pub. L. 91-644, title II, § 13, Jan. 2, 1971, 84 Stat. 1889.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (d), is set out in Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (d), is classified to section 5845(a) of Title 26.

AMENDMENTS

1971—Subsec. (c). Pub. L. 91-644, in first sentence, substituted "felony for which he" for "felony which" in items (1) and (2) and inserted ", in addition to the punishment provided for the commission of such felony," preceding "be sentenced", and in second sentence substituted "for not less than two nor more than twenty-five years" for "for not less than five years nor more than 25 years", inserted "in the case of a second or subsequent conviction" following "suspend the sentence", and prohibited term of imprisonment imposed under this subsec. to run concurrently with any term for commission of the felony.

1968—Subsec. (a). Pub. L. 90-618 added the provision authorizing the Board of Parole to grant parole to a person convicted under this chapter.

Subsec. (b). Pub. L. 90-618 added "or any ammunition" following "a firearm".

Subsec. (c). Pub. L. 90-618 added subsec. (c). Former subsec. (c) was redesignated as (d).

Subsec. (d). Pub. L. 90-618 redesignated former subsec. (c) as (d), and as so redesignated, substituted "section 5845(a) of that Code" for "section 5848(1) of said Code".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

§ 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Secretary of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraphs (3) and (4) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on a application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice

of such action, together with the reasons therefor.

(d) The Secretary may authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary may permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 233 and amended Pub L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1224.)

REFERENCES IN TEXT

The National Firearms Act, referred to in subsec. (c), is Pub. L. 90-618, title II, Oct. 22, 1968, 82 Stat. 1227, which is classified, generally to chapter 53 (§ 5801 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Tables volume.

Section 5845(b) of the Internal Revenue Code of 1954, referred to in subsec. (d)(2), is classified to section 5845(b) of Title 26.

Section 5845(a) of the Internal Revenue Code of 1954, referred to in subsec. (d)(3), is classified to section 5845(a) of Title 26.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-618 redesignated existing provisions as subsec. (a)(1), and, as so redesignated, made minor changes in phraseology, and added subsecs. (a)(2) to (a)(5).

Subsec. (b). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees.

Subsec. (c). Pub. L. 90-618 substituted "imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and" for "under this chapter", "to act in a manner dangerous to public safety" for "to conduct his operations in an unlawful manner," and "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" for "licensee".

Subsec. (d). Pub. L. 90-618 made minor changes in phraseology, subjected ammunition to the authority of the Secretary in the material preceding subsec. (d)(1), substituted "section 5845(b)" for "section 5848(2)" in subsec. (d)(2), substituted "section 5845(a)" for "section 5848(1)" and "excluding surplus military firearms" for "and in the case of surplus military firearms is a rifle or shotgun" in subsec. (d)(3), added "or ammunition" following "the firearm" in subsec. (d)(4), and authorized the Secretary to permit the importation of ammunition for examination and testing in the material following subsec. (d)(4).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, except subsecs. (a)(1) and (d) effective Oct. 22, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 922 of this title.

§ 926. Rules and regulations

The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including—

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license; and

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection.

The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226.)

AMENDMENTS

1968—Pub. L. 90-618 added provisions authorizing the Secretary to prescribe regulations requiring a licensee, when dealing with another licensee, to provide such other licensee a certified copy of the license, and regulations authorizing the issuance of certified copies of the license required under this chapter.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226.)

AMENDMENTS

1968—Pub. L. 90-618 struck out "or possession" following "State" wherever appearing.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

§ 928. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226.)

AMENDMENTS

1968—Pub. L. 90-618 reenacted section without change.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective on Dec. 16, 1968, see section 105 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 921 of this title.

CROSS REFERENCES

Unlawful possession or receipt of firearms, see title VII of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

CHAPTER 45—FOREIGN RELATIONS

Sec.
951. Agents of foreign governments.
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953. Private correspondence with foreign governments.
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967. Departure of vessel forbidden in aid of neutrality.
968.[1] Exportation of war materials to certain countries.
969. Exportation of arms, liquors and narcotics to Pacific Islands.
970. Protection of property occupied by foreign governments.

[1] Act Aug. 26, 1954, ch. 937, title V, § 542(a)(14), 68 Stat. 861, which repealed section 968 of this title, did not amend analysis to reflect the repeal.

AMENDMENTS

1972—Pub. L. 92-539, title IV, § 402, Oct. 24, 1972, 86 Stat. 1073, added item 970.

§ 951. Agents of foreign governments

Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Secretary of State, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743.)

HISTORICAL AND REVISION NOTES

Based on section 601 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 3, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80).

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

False representation as foreign diplomat, consul or officers, see section 915 of this title.

Foreign government, definition of, see section 11 of this title.

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 952. Diplomatic codes and correspondence

Whoever, by virtue of his employment by the United States, obtains from another or has or has had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and without authorization or competent authority, willfully publishes or furnishes to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743.)

HISTORICAL AND REVISION NOTES

Based on section 135 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 10, 1933, ch. 57, 48 Stat. 122).

Minor changes of phraseology were made.

CROSS REFERENCES

Classified information, disclosure by Government official, penalty for, see section 783 of Title 50, War and National Defense.

Classified information, disclosure of, see section 798 of this title.

§ 953. Private correspondence with foreign governments

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent

thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

(June 25, 1948, ch. 645, 62 Stat. 744.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 5 (Mar. 4, 1909, ch. 321, § 5, 35 Stat. 1088; Apr. 22, 1932, ch. 126, 47 Stat. 132).

The reference to any citizen or resident within the jurisdiction of the United States not duly authorized "who counsels, advises or assists in such correspondence with such intent" was omitted as unnecessary in view of definition of principal in section 2.

Mandatory punishment provision was rephrased in the alternative.

Minor changes of arrangement and in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 954. False statements influencing foreign government

Whoever, in relation to any dispute or controversy between a foreign government and the United States, willfully and knowingly makes any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the United States or any department or agency thereof, to the injury of the United States, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 744.)

HISTORICAL AND REVISION NOTES

Based on section 231 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 1, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80).

Mandatory punishment provision was rephrased in the alternative.

Words "department or agency" were added to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title.

§ 955. Financial transactions with foreign governments

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

This section is applicable to individuals, partnerships, corporations, or associations other than public corporations created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest through stock ownership or otherwise. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this section shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to making of any loan to such government, political subdivision, organization, or association.

(June 25, 1948, ch. 645, 62 Stat. 744.)

HISTORICAL AND REVISION NOTES

Based on section 804a of title 31, U.S.C., 1940 ed., Money and Finance (Apr. 13, 1934, ch. 112, §§ 1, 2, 48 Stat. 574).

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Words "upon conviction thereof" were omitted from first paragraph as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

An additional paragraph was added to the text of this section by Senate amendment, which was taken from section 804b of Title 31, U.S.C., Money and Finance. Therefore, as finally enacted, such section 804b and the Acts from which it was derived (Act Apr. 13, 1934, ch. 112, § 3, as added July 31, 1945, ch. 339, § 9, 59 Stat. 516), were an additional source of this section. See Senate Report No. 1620, amendment No. 9, 80th Cong.

CROSS REFERENCES

Export-Import Bank of the United States as exempt from the provisions of former section 804a of Title 31, from which this section was, in part, derived, see section 635h of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 635h; title 22 section 2395.

§ 956. Conspiracy to injure property of foreign government

(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy.

(June 25, 1948, ch. 645, 62 Stat. 744.)

HISTORICAL AND REVISION NOTES

Based on section 234 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 5, 40 Stat. 226).

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title.

§ 957. Possession of property in aid of foreign government

Whoever, in aid of any foreign government, knowingly and willfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than $1,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 98 (June 15, 1917, ch. 30, title XI, § 22, 40 Stat. 230; Mar. 28, 1940, ch. 72, § 8, 54 Stat. 80).

Definition of "foreign government" was omitted and is incorporated in section 11 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses under this section, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Warrant to search for property used in violation of this section, see rule 41, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title.

§ 958. Commission to serve against friendly nation

Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, against any prince, state, colony, district, or people, with whom the United States is at peace, shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 21 (Mar. 4, 1909, ch. 321, § 9, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Right of expatriation, generally, see section 1481 et seq. of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 section 461.

§ 959. Enlistment in foreign service

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people

on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

(June 25, 1948, ch. 645, 62 Stat. 745.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 22, 30 (Mar. 4, 1909, ch. 321, §§ 10, 18, 35 Stat. 1089, 1091; May 7, 1917, ch. 11, 40 Stat. 39).

Section consolidates said sections of title 18, U.S.C., 1940 ed. Last sentence of section 30 of title 18, U.S.C., 1940 ed., relating to piracy and treason, was omitted as unnecessary.

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

References in subsection (c) to sections 960 and 961 of this title are to the only other sections to which the subsection can apply.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 section 461.

§ 960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 25 (Mar. 4, 1909, ch. 321, § 13, 35 Stat. 1090; June 15, 1917, ch. 30, title V, § 8, 40 Stat. 223).

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Reference to territory or possessions of the United States was omitted as covered by definitive section 5 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Foreign transients, application of section to, see section 959 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 959, 1717 of this title; title 8 section 1251; title 22 sections 461, 465.

§ 961. Strengthening armed vessel of foreign nation

Whoever, within the United States, increases or augments the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States is at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 746.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 24 (Mar. 4, 1909, ch. 321, § 12, 35 Stat. 1090).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment was rephrased in the alternative.

Words "within the United States" were substituted for "within the territory or jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Foreign transients, application of section to, see section 959 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 959 of this title; title 22 section 461.

§ 962. Arming vessel against friendly nation

Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed—

Shall be fined not more than $10,000 or imprisoned not more than three years, or both.

Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States.

(June 25, 1948, ch. 645, 62 Stat. 746.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 23 (Mar. 4, 1909, ch. 321, § 11, 35 Stat. 1090).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor change was made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Limitation on informer's right to recover, see section 232 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 section 461.

§ 963. Detention of armed vessel

(a) During a war in which the United States is a neutral nation, the President, or any person authorized by him, may detain any armed vessel owned wholly or in part by citizens of the United States, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or upon the high seas.

(b) Whoever, in violation of this section takes, or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 746.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 32, 36 (June 15, 1917, ch. 30, title V, §§ 2, 6, 40 Stat. 221, 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.,

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Treasury of authority vested in the President by this section see section 1(*l*) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 section 465.

§ 964. Delivering armed vessel to belligerent nation

(a) During a war in which the United States is a neutral nation, it shall be unlawful to send out of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract that such vessel will be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 747.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 33, 36 (June 15, 1917, ch. 30, title V, §§ 3, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Minor changes of phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title; title 22 section 465.

§ 965. Verified statements as prerequisite to vessel's departure

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from

port shall, in addition to the facts required by sections 91, 92, and 94 of Title 46 to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the collector of customs for the district wherein such vessel is then located a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

The Secretary of the Treasury is authorized to promulgate regulations upon compliance with which vessels engaged in the coastwise trade or fisheries or used solely for pleasure may be relieved from complying with this section.

(June 25, 1948, ch. 645, 62 Stat. 747.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 34, 36 (June 15, 1917, ch. 30, title V, §§ 4, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Words in subsection (a), referring to title 46, sections 91, 92, and 94, "each of which sections is hereby declared to be and is continued in full force and effect," were omitted as surplusage.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

The final paragraph of the revised section was added on advice of the Treasury Department, to conform with administrative practice and because of the unnecessary burden upon domestic commerce had the provisions of this section been enforced against coastwise, fishing, and pleasure vessels.

Minor changes of phraseology were made.

REFERENCES IN TEXT

Section 92 of Title 46, referred to in subsec. (a), was repealed by Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.
Refusal of clearance for false statements, see section 966 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 966 of this title; title 22 section 465.

§ 966. Departure of vessel forbidden for false statements

(a) Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in section 965 of this title are false, the collector of customs for the district in which the vessel is located may, subject to review by the head of the department or agency charged with the administration of laws relating to clearance of vessels, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the United States. It shall thereupon be unlawful for the vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 747.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 35, 36 (June 15, 1917, ch. 30, title V, §§ 5, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

The phrase "by the head of the department or agency charged with the administration of laws relating to clearance of vessels," was substituted for "by the Secretary of Commerce" in view of Executive Order No. 9083 (F.R. 1609) transferring functions to the Commissioner of Customs.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Minor changes of phraseology were made.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required

to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 section 465.

§ 967. Departure of vessel forbidden in aid of neutrality

(a) During a war in which the United States is a neutral nation, the President, or any person authorized by him, may withhold clearance from or to any vessel, domestic or foreign, or, by service of formal notice upon the owner, master, or person in command or in charge of any domestic vessel not required to secure clearances, may forbid its departure from port or from the United States, whenever there is reasonable cause to believe that such vessel is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations. It shall thereupon be unlawful for such vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 748.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 31, 36 (June 15, 1917, ch. 30, title V, §§ 1, 6, 40 Stat. 221, 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed., with minor changes in translations and phraseology.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Changes in phraseology were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Treasury of authority vested in the President by this section, see section 1(m) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Restrictions on use of American ports where evidence insufficient under this section, see section 450 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 22 sections 450, 465.

[§ 968. Repealed. Aug. 26, 1954, ch. 937, title V, § 542(a)(14), 68 Stat. 861]

Section, act June 25, 1948, ch. 645, § 1, 62 Stat. 748, related to exportation of war materials to certain countries and is now covered by section 1934 of Title 22, Foreign Relations and Intercourse.

§ 969. Exportation of arms, liquors and narcotics to Pacific Islands

(a) Whoever, being subject to the authority of the United States, gives, sells, or otherwise supplies any arms, ammunition, explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than $50 or imprisoned not more than three months or both.

In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited.

If it appears to the court that such opium, wine, or spirits have been given bona fide for medical purposes, it shall be lawful for the court to dismiss the charge.

(b) All offenses against this section, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States.

(June 25, 1948, ch. 645, 62 Stat. 748.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 499, 500 (Mar. 4, 1909, ch. 321, §§ 308, 309, 35 Stat. 1148).

Section consolidates said sections of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect consolidation.

Words "and the courts of the United States shall have jurisdiction accordingly," were omitted from subsection (b) as unnecessary in view of sections 3231 and 3238 of this title.

CROSS REFERENCES

Indians, intoxicants dispensed in Indian country, see section 1154 of this title.

Special maritime and territorial jurisdiction of United States, definition of, see section 7 of this title.

§ 970. Protection of property occupied by foreign governments

(a) Whoever willfully injures, damages, or destroys, or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or

utilized or occupied by any foreign government or international organization, by a foreign official or official guest, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(b) Whoever, willfully with intent to intimidate, coerce, threaten, or harass—

(1) forcibly thrusts any part of himself or any object within or upon that portion of any building or premises located within the United States, which portion is used or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest; or

(2) refuses to depart from such portion of such building or premises after a request—

(A) by an employee of a foreign government or of an international organization, if such employee is authorized to make such request by the senior official of the unit of such government or organization which occupies such portion of such building or premises;

(B) by a foreign official or any member of the foreign official's staff who is authorized by the foreign official to make such request;

(C) by an official guest or any member of the official guest's staff who is authorized by the official guest to make such request; or

(D) by any person present having law enforcement powers;

shall be fined not more than $500 or imprisoned not more than six months, or both.

(c) For the purpose of this section "foreign government", "foreign official", "international organization", and "official guest" shall have the same meanings as those provided in section 1116(b) of this title.

(Added Pub. L. 92-539, title IV, § 401, Oct. 24, 1972, 86 Stat. 1073, and amended Pub. L. 94-467, § 7, Oct. 8, 1976, 90 Stat. 2000.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-467, § 7(b), added subsec. (b), and redesignated former subsec. (b) as (c). Subsec. (c). Pub. L. 94-467, § 7(a), redesignated former subsec. (b) as (c), and as so redesignated, struck out reference to section 1116(c) of this title.

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
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1027. False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974.

AMENDMENTS

1974—Pub. L. 93-406, title I, § 111(a)(2)(B)(iii), Sept. 2, 1974, 88 Stat. 852, substituted "Employee Retirement Income Security Act of 1974" for "Welfare and Pension Plans Disclosure Act" in item 1027.

1967—Pub. L. 90-19, § 24(e)(1), (2), May 25, 1967, 81 Stat. 28, included "Department of Housing and Urban Development" in item 1010 and substituted the same for "Public Housing Administration" in item 1012, respectively.

1962—Pub. L. 87-420, § 17(d), Mar. 20, 1962, 76 Stat. 42, added item 1027.

1951—Act Oct. 31, 1951, ch. 655, § 25, 65 Stat. 720, substituted, in item 1012, "Public Housing Administration" for "United States Housing Authority".

1949—Act May 24, 1949, ch. 139, §§ 18, 19, 63 Stat. 92, corrected spelling of "1016. Acknowledgment etc.", and substituted "officers" for "offices" in "1019. Certificates by consular officers."

CROSS REFERENCES

Alien registration, fraud and false statements, see section 1306 of Title 8, Aliens and Nationality.

Carriers' reports to Interstate Commerce Commission, false entries, see section 20 of Title 49, Transportation.

China Trade, false or fraudulent statements prohibited, see section 158 of Title 15, Commerce and Trade.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 78o, 80b-3.

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 80 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Section 80 of title 18, U.S.C., 1940 ed., was divided into two parts.

The provision relating to false claims was incorporated in section 287 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "or any corporation in which the United States of America is a stockholder" in said section 80 were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

In addition to minor changes of phraseology, the maximum term of imprisonment was changed from 10 to 5 years to be consistent with comparable sections. (See reviser's note under section 287 of this title.)

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Conspiracy to defraud Government in regard to false claims, see section 286 of this title.

Conspiracy to defraud United States, see section 371 of this title.

Education, section as applicable to National Defense Education Program, see section 581 of Title 20, Education.

False claims for pensions, see section 289 of this title.

False claims for postal losses, see section 288 of this title.

False entry or certificate by revenue officer or agent, see section 7214 of Title 26, Internal Revenue Code.

Falsification of postal returns to increase compensation, see section 1712 of this title.

Fraudulent claims, generally, see section 287 of this title.

National Science Foundation scholarships or fellowships, applicability of section to loyalty affidavits, see section 1874 of Title 42, The Public Health and Welfare.

Passports, false statements in application, see section 1542 of this title.

Patent declaration in lieu of oath; warning in document of punishment for willful false statements and the like under this section, see section 25 of Title 35, Patents.

Public buildings, section as applicable to statements by contractors, see section 276c of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457; title 20 section 581; title 22 section 1623; title 29 section 916; title 31 section 1052; title 40 section 276c; title 42 sections 1874, 2000b-3, 2000c-6, 3426, 3792.

§ 1002. Possession of false papers to defraud United States

Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 74 (Mar. 4, 1909, ch. 321, § 30, 35 Stat. 1094).

Words "or any agency thereof" after "United States" and word "agency" after "any" and before "officer," were inserted to eliminate any possible ambiguity as to scope of section. (See definition of "agency" in section 6 of this title.)

The maximum fine of "$10,000" was substituted for "$500" in order to conform punishment provisions to those of comparable sections. (See section 1001 of this title.)

Minor verbal change was made.

CROSS REFERENCES

Contracts, deeds, and powers of attorney, see section 495 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 1003. Demands against the United States

Whoever knowingly and fraudulently demands or endeavors to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, wages, gratuity, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than $10,000 or imprisoned not more than five years, or both; but if the sum or value so obtained or attempted to be obtained does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 79 (Mar. 4, 1909, ch. 321, § 34, 35 Stat. 1095).

Words "prize money" were deleted on the ground that they are an anachronism and were so before 1909. (See reviser's note under section 915 of this title.)

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's note to sections 641 and 645 of this title.)

The maximum term of "five years" was substituted for "ten years" and "$10,000" was substituted for "$5,000" as being more in harmony with punishment provision of similar sections. (See reviser's note under section 1001 of this title.)

Minor changes in phraseology were made.

§ 1004. Certification of checks

Whoever, being an officer, director, agent, or employee of any Federal Reserve bank or member bank of the Federal Reserve System, certifies a check before the amount thereof has been regularly deposited in the bank by the drawer thereof, or resorts to any device, or receives any fictitious obligation, directly or collaterally, in order to evade any of the provisions of law relating to certification of checks, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

HISTORICAL AND REVISION NOTES

Based on section 591 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. § 5208; July 12, 1882, ch. 290, § 13, 22 Stat. 166; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Feb. 25, 1927, ch. 191, § 12, 44 Stat. 1231).

Words "be deemed guilty of a misdemeanor and shall" were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Words "on conviction thereof" were omitted as surplusage, because punishment cannot be imposed until after conviction.

Words "in any district court of the United States" were omitted as unnecessary, because section 3231 of this title confers jurisdiction on Federal district courts of all crimes and offenses defined in this title.

Changes were made in phraseology.

CROSS REFERENCES

Liability of Federal Reserve or member bank for certifying check when amount of deposit was inadequate, see section 501 of Title 12, Banks and Banking.

§ 1005. Bank entries, reports and transactions

Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, national bank or insured bank, without authority from the directors of such bank, issues or puts in circulation any notes of such bank; or

Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or

Whoever makes any false entry in any book, report, or statement of such bank with intent to injure or defraud such bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, or the Board of Governors of the Federal Reserve System—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank or trust company, which has become a member of one of the Federal Reserve banks; and "insured bank" includes any state bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(June 25, 1948, ch. 645, 62 Stat. 750.)

HISTORICAL AND REVISION NOTES

Based on sections 592, 597 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. § 5209; Dec. 23, 1913, ch. 6, § 22(i) as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

(See reviser's note under section 656 of this title for comprehensive statement of reasons for separating section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, into three revised sections, and section 597 thereof into two revised sections, with the consequent extensive changes in phraseology, style, and arrangement.)

In this section, national bank receivers and Federal reserve agents were not included in the initial enumeration of persons at whom the act is directed, since the provisions of this section, unlike section 656 of this title, are not directed at such receivers and agents.

No changes of meaning or substance were made, except that, like said section 656 of this title, the different punishment provisions were reconciled, and one uniform punishment provision was adopted.

The words "shall be deemed guilty of a misdemeanor" were omitted as unnecessary in view of the definition of a misdemeanor in section 1 of this title.

The words "and upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Since section 3231 of this title gives the district court jurisdiction of criminal prosecutions, the words "in any district court of the United States" were omitted as unnecessary.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Bank examinations, see section 481 et seq. of Title 12, Banks and Banking.

Federal Reserve System, laws applicable on becoming member bank, see section 324 of Title 12.

Liability of directors and officers of member banks, see section 503 of Title 12.

Officers and employees of government, false entries and reports of moneys or securities, see section 2073 of this title.

Reports to Comptroller of the Currency, see section 161 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 209, 324, 503, 1847.

§ 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or by the Administrator of the National Credit Union Administration or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obli-

gation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 750; May 24, 1949, ch. 139, § 20, 63 Stat. 92; July 28, 1956, ch. 773, § 2, 70 Stat. 714; Aug. 21, 1958, Pub. L. 85-699, title VII, § 704, 72 Stat. 698; Oct. 4, 1961, Pub. L. 87-353, § 3(s), 75 Stat. 774; May 25, 1967, Pub. L. 90-19, § 24(a), 81 Stat. 27; Oct. 19, 1970, Pub. L. 91-468, § 6, 84 Stat. 1016.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(b) and 1514(c) of title 7, U.S.C., 1940 ed., Agriculture, sections 264(u), 984, 1121, 1138d(c), 1311, 1441(c), 1467(c) and 1731(c) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 12B(u), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 31, fourth par., 39 Stat. 383; July 17, 1916, ch. 245, § 211(a), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1459; Mar. 4, 1923, ch. 252, title II, § 216(a), 42 Stat. 1471; Jan. 22, 1932, ch. 8, § 16(c), 47 Stat. 11; July 22, 1932, ch. 522, § 21(c), 47 Stat. 738; Ex. Ord. No. 6084, Mar. 27, 1933; June 13, 1933, ch. 64, § 8(c), 48 Stat. 135; June 16, 1933, ch. 98, § 64(c), 48 Stat. 268; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 27, 1934, ch. 847, § 512(c), 48 Stat. 1265; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 701; July 22, 1937, ch. 517, title IV, § 52(b), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, § 514(c), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

Each of the eleven sections from which this section was derived contained similar provisions relating to embezzlement, false entries, and fraudulent issuance or assignment of obligations with respect to one or more named agencies or corporations.

These were divided and the false entry and fraudulent issuance or assignment of obligation provisions of all, form the basis of this section. The remaining provisions of each section, relating to embezzlement and misapplication, form the basis for section 657 of this title. That portion of said section 616(c) of title 15, relating to disclosure of information, forms the basis for section 1904 of this title.

Each revised section condenses and simplifies the constituent provisions without change of substance except as herein indicated.

The punishment provisions in each section were the same except that in section 1026(b) of title 7, U.S.C., 1940 ed., and sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., the maximum fine was $5,000. This consolidated section adopts the $10,000 maximum fine provided by the seven other sections.

References to persons aiding or abetting contained in sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, as such persons are made principals by section 2 of this title.

The term "receiver," used in sections 1121 and 1311 of title 12, U.S.C., 1940 ed., with reference to Federal intermediate credit banks and agricultural credit corporations, was omitted as this term is undoubtedly embraced in the phrase "or connected in any capacity with."

The term "or of any department or agency of the United States" was inserted in order to clarify the sweeping provisions against fraudulent acts and to eliminate any possible ambiguity as to scope of section. (See definitions of "department" and "agency" in section 6 of this title.)

Words "shall be deemed guilty of a misdemeanor", contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, in view of definition of misdemeanor in section 1 of this title.

Words "and upon conviction", contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as surplusage, because punishment cannot be imposed until after conviction.

Words "in any district court of the United States", contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, because section 3231 of this title confers jurisdiction on the Federal district courts of all crimes and offenses defined in this title.

The conspiracy provisions of section 1138d(f) of title 12, U. S.C., 1940 ed., Banks and Banking, were not added to this consolidated section for reasons stated in reviser's note under section 493 of this title. (See also reviser's note under section 371 of this title.)

1949 ACT

[Section 20] conforms section 1006 of title 18, U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Historical and Revision note under section 657 of this title]).

AMENDMENTS

1970—Pub. L. 91-468 added the National Credit Union Administration and its Administrator to the enumeration of Federal Credit institutions and personnel.

1967—Pub. L. 90-19 substituted "Department of Housing and Urban Development" for "Federal Housing Administration".

1961—Pub. L. 87-353 struck out "Federal Farm Mortgage Corporation," following "Federal Housing Administration,".

1958—Pub. L. 85-699 included officers, agents or employees of or connected in any capacity with small business investment companies.

1956—Act July 28, 1956, included officers, agents or employees of or connected in any capacity with any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

1949—Act May 24, 1949, inserted "the Secretary of Agriculture acting through the Farmers' Home Administration".

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the said Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

NATIONAL CREDIT UNION ADMINISTRATION

Establishment as independent agency, membership etc., see section 1752 et seq. of Title 12, Banks and Banking.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084, set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

ABOLITION OF FARMERS' HOME CORPORATION

Farmers' Home Corporation, created as an agency within the Department of Agriculture by section 1014 of Title 7, Agriculture, was abolished as a result of repeal of such section by Pub. L. 87-128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Financial control of government corporations, see chapter 14 of Title 31, Money and Finance.

Secret Service, detection, arrest and delivery into custody of any person violating this section in so far as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 12 section 1730a.

§ 1007. Federal Deposit Insurance Corporation transactions

Whoever, for the purpose of obtaining any loan from the Federal Deposit Insurance Corporation, or any extension or renewals thereof, or the acceptance, release, or substitution of security therefor, or for the purpose of inducing the Federal Deposit Insurance Corporation to purchase any assets, or for the purpose of obtaining the payment of any insured deposit or transferred deposit or the allowance, approval, or payment of any claim, or for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, makes any statement, knowing it to be false, or willfully over-values any security, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 750.)

HISTORICAL AND REVISION NOTES

Based on section 264(s) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 12B(s), as added June 16, 1933, ch. 89, § 8, 48 Stat. 177; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 700).

Words "Federal Deposit Insurance" were inserted before "Corporation" in three places, so as to identify said Corporation, and phrase "under this section" was omitted as no longer applicable, considering transfer of this section to this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 1008. Federal Savings and Loan Insurance Corporation transactions

Whoever, for the purpose of inducing the insurance of the accounts of any institution by the Federal Savings and Loan Insurance Corporation or for the purpose of obtaining any extension or renewal of such insurance by such Corporation or for the purpose of influencing in any way the action of such Corporation, makes, passes, utters, or publishes any statement, knowing the same to be false; or

Whoever, for the purpose of influencing in any way the action of such Corporation, utters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been uttered, forged, or counterfeited, or willfully over-values any security, asset, or income, of any institution insured or applying for insurance by said Corporation—

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 751.)

HISTORICAL AND REVISION NOTES

Based on section 1731(f) of title 12, U.S.C., 1940 ed., Banks and Banking (June 27, 1934, ch. 847, § 512(e), as added Feb. 3, 1938, ch. 13, § 10, 52 Stat. 25).

References to persons causing or procuring were omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

§ 1009. Rumors regarding Federal Savings and Loan Insurance Corporation

Whoever willfully and knowingly makes, circulates, or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of the Federal Savings and Loan Insurance Corporation, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 751.)

HISTORICAL AND REVISION NOTES

Based on section 1731(e) of title 12, U.S.C., 1940 ed., Banks and Banking (June 27, 1934, ch. 847, § 512(f), as added Feb. 3, 1938, ch. 13, § 10, 52 Stat. 25).

Words "or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor" were omitted as unnecessary because such persons are principals under section 2 of this title.

Words "is guilty of a misdemeanor" were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Changes were made in phraseology.

§ 1010. Department of Housing and Urban Development and Federal Housing Administration transactions

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of

Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 751; May 25, 1967, Pub. L. 90-19, § 24(c), 81 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on section 1731(a) of title 12, U.S.C., 1940 ed., Banks and Banking (June 27, 1934, ch. 847, § 512(a), 48 Stat. 1265; Feb. 3, 1938, ch. 13, § 9, 52 Stat. 24).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

"$5,000" was substituted for "$3,000" to make this section more consistent in its punishment provisions with comparable sections. (See section 1008 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1967—Pub. L. 90-19 included reference to Department of Housing and Urban Development in the catchline and substituted in the text "Department of Housing and Urban Development" for "Federal Housing Administration" and "Department" for "Administration" in two instances, respectively.

§ 1011. Federal land bank mortgage transactions

Whoever, being a mortgagee, knowingly makes any false statement in any paper, proposal, or letter, relating to the sale of any mortgage, to any Federal land bank; or

Whoever, being an appraiser, willfully overvalues any land securing such mortgage—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 751.)

HISTORICAL AND REVISION NOTES

Based on section 987 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31, seventh paragraph, as added June 16, 1933, ch. 98, § 78, 48 Stat. 272).

Minor changes were made in phraseology.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 12 section 1457.

§ 1012. Department of Housing and Urban Development transactions

Whoever, with intent to defraud, makes any false entry in any book of the Department of Housing and Urban Development or makes any false report or statement to or for such Department; or

Whoever receives any compensation, rebate or reward, with intent to defraud such Department or with intent unlawfully to defeat its purposes; or

Whoever induces or influences such Department to purchase or acquire any property or to enter into any contract and willfully fails to disclose any interest which he has in such property or in the property to which such contract relates, or any special benefit which he expects to receive as a result of such contract—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 752; Oct. 31, 1951, ch. 655, § 26, 65 Stat. 720; May 25, 1967, Pub. L. 90-19, § 24(d), 81 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on sections 1423-1425 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (Sept. 1, 1937, ch. 896, §§ 23-25, 50 Stat. 899).

Three sections were consolidated with changes of phraseology and arrangement necessary to effect consolidation.

Words "upon conviction thereof", in each section were omitted as surplusage since punishment cannot be imposed until after conviction.

The provisions of section 1424 of title 42, U.S.C., 1940 ed., The Public Health and Welfare, relating to conspiracy were omitted as inconsistent with the general conspiracy statute, section 371 of this title, both as to punishment and allegation and proof of an overt act. (See reviser's note under section 493 of this title.)

AMENDMENTS

1967—Pub. L. 90-19 substituted "Department of Housing and Urban Development" for "Public Housing Administration" in the catchline and text and "Department" for "Administration" wherever appearing in the text, respectively.

1951—Act Oct. 31, 1951, substituted "Public Housing Administration" for "United States Housing Authority" in section and in catchline, and "Administration" for "Authority", wherever appearing.

CROSS REFERENCES

Low-rent housing, see section 1437 et seq. of Title 42, The Public Health and Welfare.

§ 1013. Farm loan bonds and credit bank debentures

Whoever deceives, defrauds, or imposes upon, or attempts to deceive, defraud, or impose upon any person, partnership, corporation, or association by making any false pretense or representation concerning the character, issue, security, contents, conditions, or terms of any farm loan bond, or coupon, issued by any Federal land bank or banks, or by any joint-stock land bank or banks; or of any debenture, coupon, or other obligation, issued by any Federal intermediate credit bank or banks, or by any National Agricultural Credit Corporation; or by falsely pretending or representing that any farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 752.)

HISTORICAL AND REVISION NOTES

Based on sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31, fifth paragraph, 39 Stat. 384; July 17, 1916, ch. 245, § 211(g), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1461; Mar. 4, 1923, ch. 252, title II, § 216(g), 42 Stat. 1473).

This section condenses and simplifies sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, each of which contained similar provisions and similar language. The punishment provisions of all three sections were the same.

References to "chapter" and "subchapter" were omitted and words describing the various types of banks or organizations to which said sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, related, were inserted in lieu. This necessitated some rephrasing and transposition of phrases, but without change of meaning or substance.

Words "upon conviction" which were contained in sections 1127 and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, were omitted as surplusage, because punishment cannot be imposed until after conviction.

Changes were made in phraseology.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Compromise, adjustment or cancellation of farm indebtedness, false statements, see section 1026 of this title.

Secret Service, arrest, detection and delivery into custody of any person violating this section in so far as Federal land banks and joint-stock land banks are concerned, see section 3056 of this title.

Spurious advertising or representations as to Federal farm loans and bonds, see section 709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or any division, officer, or employee thereof, or of any corporation organized under sections 1131-1134m of Title 12, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the Administrator of the National Credit Union Administration, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 752; May 24, 1949, ch. 139, § 21, 63 Stat. 92; July 26, 1956, ch. 741, title I, § 109, 70 Stat. 667; Aug. 21, 1958, Pub. L. 85-699, title VII, § 705, 72 Stat. 699; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), 73 Stat. 387; Oct. 4, 1961, Pub. L. 87-353, § 3(t), 75 Stat. 774; July 2, 1964, Pub. L. 88-353, § 5, 78 Stat. 269; Oct. 19, 1970, Pub. L. 91-468, § 7, 84 Stat. 1017; Dec. 31, 1970, Pub. L. 91-609, title IX, § 915, 84 Stat. 1815.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(a) and 1514(a) of title 7, U.S.C., 1940 ed., Agriculture, sections 596, 981, 1122, 1123, 1138d(a), 1248, 1312, 1313, 1441(a), and 1467(a), of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(a) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 22(h), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; July 17, 1916, ch. 245, § 31, first paragraph, 39 Stat. 382; July 17, 1916, ch. 245, § 211(b), (c), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; Mar. 4, 1923, ch. 252, title II, §§ 209(h), 216(b), (c), 42 Stat. 1468, 1472; Jan. 22, 1932, ch. 8, § 16 (a), 47 Stat. 11; July 22, 1932, ch. 522, § 21(a), 47 Stat. 738; June 13, 1933, ch. 64, § 8(a), 48 Stat. 134; June 16, 1933, ch. 98, § 64(a), 48 Stat. 267; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 3, 1935, ch. 164, § 21, 49 Stat. 319; July 22, 1937, ch. 517, title IV, § 52(a); 50 Stat. 531; Feb. 16, 1938, ch. 30, title V, § 514(a), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

Each of the 13 sections from which this section was derived contained similar provisions either relating to false representations and statements, or overvaluation of security, with respect to one or more of the named banks, agencies, or corporations.

These were consolidated and the false statement and security overvaluation provisions of all, form the basis of this section. The provisions of section 981 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to acceptance of loans or gratuities by examiners, were consolidated with similar provisions from other sections to form section 218 [now section 213] of this title. The provisions of said section 981 of title 12, U.S.C., 1940 ed., Banks and Banking, prohibiting land bank and national farm loan association examiners from performing "any other service for compensation for any bank or banking or loan association, or for any person connected therewith in any capacity" were consolidated with similar provisions from other sections to form section 1909 of this title.

Eight of the consolidated sections contained identical punishment, each providing for a maximum fine of $5,000 and maximum imprisonment of 2 years. Two sections provided for a maximum fine of $10,000 and maximum imprisonment of 5 years. One section provided for maximum fine of $5,000 and maximum imprisonment of 5 years, one section provided for maximum fine of $2,000 and maximum imprisonment of 2 years, and one section provided for maximum fine of $5,000 and maximum imprisonment of 1 year.

The punishment by maximum fine of $5,000 or maximum imprisonment of 2 years, or both, provided in this consolidated section was adopted as most consistent with the greater number of comparable sections. (See sections 1008 and 1010 of this title.) This is a reasonable reconciliation of the conflicting punishment provisions and adequate for the offenses described.

The enumeration of "application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan" and the wording "or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor" does not occur in any one of the original sections, but such enumeration and such wording are adequate, and they represent a composite of terms and transactions mentioned in each.

In addition, changes were made in phraseology to secure uniformity of style, and some rephrasing was necessary, but the consolidation was without change of substance except as above indicated.

Section 1138d(f) of Title 12, U.S.C., 1940 ed., Banks and Banking, relating to conspiracy, was not added to this consolidated section for reasons given in reviser's note under section 493 of this title.

1949 Act

[Section 21] conforms section 1014 of Title 18 U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Historical and Revision note under section 657 of this title]).

References in Text

Section 1131 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

Sections 1131a, 1131c to 1131g, 1131g-2 to 1131i, 1134 to 1134m of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131a-1 and 1131j of Title 12, included within the reference to sections 1131 to 1134m of Title 12, are omitted from the Code. Section 1131a-1 of Title 12, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts. Section 1131j was covered by former section 1131g-2 of Title 12, prior to its repeal by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131b and 1131g-1 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by act July 26, 1956, ch. 741, Title 1, § 105(c), (q), 70 Stat. 665, 666.

Amendments

1970—Pub. L. 91-609 extended criminal penalty for fraud or false statements to influence any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the Administrator of the National Credit Union Administration.

Pub. L. 91-468 substituted "a Federal credit union, or an insured State-chartered credit union" for "or a Federal credit union".

1964—Pub. L. 88-353 included Federal credit unions.

1961—Pub. L. 87-353 struck out "or the Federal Farm Mortgage Corporation," following "any Federal intermediate credit bank,".

1959—Pub. L. 86-168 substituted "Federal land bank association" for "National farm loan association".

1958—Pub. L. 85-699 included small business investment companies.

1956—Act July 26, 1956, eliminated corporations in which a Production Credit Corporation holds stock.

1949—Act May 24, 1949, inserted "the Secretary of Agriculture acting through the Farmers' Home Administration".

Effective Date of 1959 Amendment

Amendment by Pub. L. 86-168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86-168, set out as an Effective Date of 1959 Amendment note under section 751 of Title 12, Banks and Banking.

Effective Date of 1956 Amendment

Amendment by act July 26, 1956, effective Jan. 1, 1957, see section 202(a) of act July 26, 1956, set out as an Effective Date note under section 1027 of Title 12, Banks and Banking.

Abolition of Reconstruction Finance Corporation

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees.

Farm Credit Administration

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084 set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

Abolition of Farmers' Home Corporation

Farmers' Home Corporation, created as an agency within the Department of Agriculture by section 1014 of Title 7, Agriculture, was abolished as a result of repeal of such section by Pub. L. 87-128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318.

National Agricultural Credit Corporation

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

Abolition of Home Owners' Loan Corporation

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

National Credit Union Administration

Establishment as independent agency, membership, etc., see section 1752 et seq. of Title 12, Banks and Banking.

Cross References

Compromise, adjustment or cancellation of farm indebtedness, false statements, see section 1026 of this title.

Liability of directors and officers of member banks, see section 503 of Title 12, Banks and Banking.

Secret Service, detection, arrest and delivery into custody of any person violating this section in so far as the Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

Section Referred to in Other Sections

This section is referred to in section 3056 of this title; title 12 sections 503, 1457.

§ 1015. Naturalization, citizenship or alien registry

(a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; or

(b) Whoever knowingly, with intent to avoid any duty or liability imposed or required by law, denies that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted; or

(c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; or

(d) Whoever knowingly makes any false certificate, acknowledgment or statement concerning the appearance before him or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 752.)

HISTORICAL AND REVISION NOTES

Based on subsections (a), paragraphs (1), (16), (17), (19), (32), (b), (d), and (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (1), (16), (17), (19), (32), (b), (d), and (*l*), 45 Stat. 1163, 1165, 1167).

Section consolidates, with minor changes, subsection (a), paragraphs (1), (16), (17), (19), (32), and subsections (b), (d), and (*l*), of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

Such changes of arrangement and phraseology were made as were appropriate and necessary.

CROSS REFERENCES

Immigration and Nationality, see section 1101 et seq. of Title 8, Aliens and Nationality.

§ 1016. Acknowledgment of appearance or oath

Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, knowingly makes any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter submitted to, made with, or taken on behalf of the United States or any department or agency thereof, concerning which an oath or affirmation is required by law or lawful regulation, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 75 (Mar. 4, 1909, ch. 321, § 31, 35 Stat. 1094).

Words "or of any department or agency thereof" were inserted after "United States" so as to remove any ambiguity as to scope of section. (See definitions of "department" and "agency" in section 6 of this title.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 1017. Government seals wrongfully used and instruments wrongfully sealed

Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate, instrument, commission, document, or paper or with knowledge of its fraudulent character, with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 130 (June 15, 1917, ch. 30, title X, § 1, 40 Stat. 227).

To clarify scope of section and in view of definition of department or agency in section 6 of this title, words "department or agency" were substituted for "executive department, or of any bureau, commission, or office".

Slight verbal changes were also made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses under this section, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717 of this title; title 12 section 1457.

§ 1018. Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 753.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 195 (Mar. 4, 1909, ch. 321, § 106, 35 Stat. 1107).

Minor changes were made in phraseology.

CROSS REFERENCES

False certificate by revenue officer or agent, see section 7214 of Title 26, Internal Revenue Code.

§ 1019. Certificates by consular officers

Whoever, being a counsul, or vice counsul, or other person employed in the consular service of the United States, knowingly certifies falsely to any invoice, or other paper, to which his certificate is authorized or required by law, shall be fined not more than $10,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 127 (Mar. 4, 1909, ch. 321, § 70, 35 Stat. 1101).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

Cross References

Certification of invoices and related matters, see sections 1481, 1482 of Title 19, Customs Duties, and section 1180 et seq. of Title 22, Foreign Relations and Intercourse.

§ 1020. Highway projects

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Oct. 31, 1951, ch. 655, § 27, 65 Stat. 721; May 6, 1954, ch. 181, § 18, 68 Stat. 76; Oct. 15, 1966, Pub. L. 89-670, § 10(f), 80 Stat. 948.)

Historical and Revision Notes

Based on section 46 of title 23, U.S.C., 1940 ed., Highways (June 19, 1922, ch. 227, § 4, par. 6, 42 Stat. 661).

Words "highway, or related," were inserted before "project" in two places for the purpose of description, in view of transfer from title 23.

Words "upon conviction thereof" were omitted as surplusage, because punishment cannot be imposed until a conviction is secured.

Changes in phraseology were made.

References in Text

The Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), referred to in the text, is act July 11, 1916, ch. 241, 39 Stat. 355, which was repealed by Pub. L. 85-767, § 2(1), Aug. 27, 1958, 72 Stat. 919. See section 101 et seq. of Title 23, Highways.

Amendments

1966—Pub. L. 89-670 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

1954—Act May 6, 1954, substituted in second paragraph "with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction" for "for work or materials for the construction"; and in third paragraph substituted "as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented" for "in any report required under Title 23, with intent to defraud the United States".

1951—Act Oct. 31, 1951, substituted in first and second paragraph "Secretary of Commerce" for "Secretary of Agriculture".

Effective Date of 1966 Amendment

Amendment by Pub. L. 89-670 effective Apr. 1, 1967 as prescribed by the President and published in the Federal Register, see section 16 (a) of Pub. L. 89-670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453, set out as notes under section 1651 of Title 49, Transportation.

Transfer of Functions

The Bureau of Public Roads, which is the principal road building agency of the Federal Government, and which was formerly under the Department of Agriculture, was redesignated the Public Roads Administration and, with its functions, transferred to the Federal Works Agency, and the functions of the Secretary of Agriculture, with respect thereto, were transferred to the Federal Works Administrator, by Reorg. Plan No. 1 of 1939, §§ 301, 302, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1426, set out in the Appendix to Title 5, Government Organization and Employees. Act June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, set out as section 753 of Title 40, Public Buildings, Property, and Works, abolished the Federal Works Agency, transferred its functions, the functions of all agencies thereof, the functions of the Federal Works Administrator, and the functions of the Commissioner of Public Roads, to the Administrator of General Services, and transferred the Public Roads Administration, which it redesignated the Bureau of Public Roads, to the General Services Administration. Reorg. Plan No. 7 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070, set out in the Appendix to Title 5, Government Organization and Employees, transferred such bureau and its functions and personnel to the Department of Commerce, and transferred the functions of the Administrator of General Services, with respect thereto, to the Secretary of Commerce, to be performed by him or, subject to his direction and control, by such officers, employees and agencies of the Department of Commerce as he should designate. Reorg. Plan No. 5 of 1950, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, transferred, with certain exceptions not applicable to this section, all functions of all other officers of the Department of Commerce, and all functions of all agencies and employees of such Department, to the Secretary of Commerce, with power vested in him to authorize their performance, or the performance of any of his functions, by any of such other officers, or by any agency or employee of the Department of Commerce.

§ 1021. Title records

Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any

other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 194 (Mar. 4, 1909, ch. 321, § 105, 35 Stat. 1107).

Words "five years" were substituted for "seven years" as more in conformity with comparable sections of this chapter.

Minor change was made in phraseology.

§ 1022. Delivery of certificate, voucher, receipt for military or naval property

Whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property used or to be used in the military or naval service, makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any agency thereof, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 84 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Word "agency" was substituted for "department" so as to eliminate any possible ambiguity as to scope of section. (See definitions of "department" and "agency" in section 6 of this title.)

Words "or any corporation in which the United States of America is a stockholder" were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

Minor changes were made in phraseology.

§ 1023. Insufficient delivery of money or property for military or naval service

Whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any agency thereof, or any corporation in which the United States has a proprietary interest, or intending to conceal such money or other property, delivers to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 85 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Word "agency" was substituted for "department" so as to eliminate any possible ambiguity as to scope of section. (See definitions of "department" and "agency" in section 6 of this title.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

§ 1024. Purchase or receipt of military, naval, or veteran's facilities property

Whoever purchases, or receives in pledge from any persons any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States under a clothing allowance or otherwise, to any member of the Armed Forces of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, or to any former member of such Armed Forces at or by any hospital, home, or facility maintained by the United States, having knowledge or reason to believe that the property has been taken from the possession of or furnished by the United States under such allowance, or otherwise, shall be fined not more than $500 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 86 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197; Apr. 30, 1940, ch. 164, 54 Stat. 171).

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1025. False pretenses on high seas and other waters

Whoever, upon any waters or vessel within the special maritime and territorial jurisdiction of the United States, by any fraud, or false pretense, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, endorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, or fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, endorser, or guarantor thereof to have been obtained by any false pretenses, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount, value or the face value of anything so obtained does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 755; May 24, 1949, ch. 139, § 22, 63 Stat. 92.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 467a (Mar. 4, 1909, ch. 321, § 288A, as added Aug. 5, 1939, ch. 434, 53 Stat. 1205).

Words "upon any waters or vessel within the special maritime and territorial jurisdiction of the United States" were substituted for "upon the high seas or on any waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof", near beginning of section. The deleted words are not necessary in view of definitive section 7 of this title.

Words "whatsoever with intent to defraud" were omitted as being included in the preceding term "false pretenses".

The punishment provision was revised to include a misdemeanor punishment (not more than $1,000 or one year, or both) where the offense involves $100 or less. (See reviser's notes under sections 641 and 645 of this title.)

1949 ACT

This section [section 22] corrects a typographical error in section 1025 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, corrected spelling of "pretense".

§ 1026. Compromise, adjustment, or cancellation of farm indebtedness

Whoever knowingly makes any false statement for the purpose of influencing in any way the action of the Secretary of Agriculture, or of any person acting under this authority, in connection with any compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 755.)

HISTORICAL AND REVISION NOTES

Based on section 1150c(a) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 20, 1944, ch. 623, § 4(a), 58 Stat. 837).

Words "of Agriculture" were inserted after "Secretary" for reasons of identification.

Words "upon conviction thereof" were omitted as surplusage, since punishment can not be imposed until after conviction.

Other changes were made in phraseology without change of substance.

§ 1027. False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974

Whoever, in any document required by title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time) to be published, or kept as part of the records of any employee welfare benefit plan or employee pension benefit plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact the disclosure of which is required by such title or is necessary to verify, explain, clarify or check for accuracy and completeness any report required by such title to be published or any information required by such title to be certified, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(Added Pub. L. 87-420, § 17(c), Mar. 20, 1962, 76 Stat. 42, and amended Pub. L. 93-406, title I, § 111(a)(2)(B)(i), (ii), Sept. 2, 1974, 88 Stat. 851.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables volume.

AMENDMENTS

1974—Pub. L. 93-406 substituted "Employee Retirement Income Security Act of 1974" for "Welfare and Pension Plans Disclosure Act" in the section catchline, and "title I of the Employee Retirement Income Security Act of 1974" and "title" for "the Welfare and Pension Plans Disclosure Act" and "Act", respectively, in the text.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031(b)(1) of Title 29.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date note under section 664 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 1031, 1111.

CHAPTER 49—FUGITIVES FROM JUSTICE

Sec.
1071. Concealing person from arrest.
1072. Concealing escapted prisoner.
1073. Flight to avoid prosecution or giving testimony.
1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property.

AMENDMENTS

1960—Pub. L. 86-449, title II, § 202, May 6, 1960, 74 Stat. 87, added item 1074.

§ 1071. Concealing person from arrest

Whoever harbors or conceals any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than $1,000 or imprisoned not more than one year, or both; except that if the warrant or process issued on a charge of felony, or after conviction of such person of any offense, the punishment shall be a fine of not more than $5,000, or imprisonment for not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 755; Aug. 20, 1954, ch. 771, 68 Stat. 747.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 246 (Mar. 4, 1909, ch. 321, § 141, 35 Stat. 1114).

Section 246 of title 18, U.S.C., 1940 ed., was divided. Part is in this section and the remainder is incorporated in section 752 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Aug. 20, 1954, increased the penalty from 6 months to 1 year where the violator harbored a person for whom process has been issued on a misdemeanor charge and added the penalty provision where the violation occurred after a person has been convicted of any offense or where a process has been issued for a felony.

CROSS REFERENCES

Harboring or concealing person violating espionage laws, see section 792 of this title.

Misprision of felony, see section 4 of this title.

§ 1072. Concealing escaped prisoner

Whoever willfully harbors or conceals any prisoner after his escape from the custody of the Attorney General or from a Federal penal or correctional institution, shall be imprisoned not more than three years.

(June 25, 1948, ch. 645, 62 Stat. 755.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753i, 910 (May 14, 1930, ch. 274, § 10, 46 Stat. 327; May 27, 1930, ch. 339, § 10, 46 Stat. 390).

Section consolidates similar language of said sections of title 18, U.S.C., 1940 ed. Remaining provisions are in section 752 of this title.

Words "willfully harbors" were added in conformity with section 1071 of this title. Punishment for harboring violators of the Espionage laws is provided in section 792 of this title. Punishment for harboring deserters from the armed forces is provided in section 1381 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Misprision of felony, see section 4 of this title.

§ 1073. Flight to avoid prosecution or giving testimony

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

(June 25, 1948, ch. 645, 62 Stat. 755; Apr. 6, 1956, ch. 177, § 1, 70 Stat. 100; Oct. 4, 1961, Pub. L. 87-368, 75 Stat. 795; Oct. 15, 1970, Pub. L. 91-452, title III, § 302, 84 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408e (May 18, 1934, ch. 302, 48 Stat. 782; Aug. 14, 1946, ch. 735, 60 Stat. 789).

Said section 408e was rewritten and the phrase "offenses as they are defined either at common law or by the laws of the place from which the fugitive flees" were inserted to remove the ambiguity discussed in the opinion of the Circuit Court of Appeals, Third Circuit, in *Brandenburg* v. *U.S.*, decided September 6, 1944, not yet reported [144 F2d 656], reversing the conviction of the appellant. The court held that Congress intended the enumerated offenses to mean those as defined at common law. The effect of the rewritten section is to make the statute applicable whether the offense committed is one defined at common law or by the law of the state from which the fugitive flees.

The words "offense punishable by imprisonment in a penitentiary" were substituted for "felony" to make the statute uniformly applicable and to include crimes of the grade of felony even where, as in New Jersey, they are denominated as misdemeanor, high misdemeanor or otherwise.

Words "from any State, Territory, or possession of the United States or the District of Columbia" were omitted in view of definitive section 10 of this title.

Words "upon conviction thereof" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-452 added cl. (3) and ", or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed," following "in custody or confinement".

1961—Pub. L. 87-368 substituted "a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State" for "murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing offenses as they are defined either at common law or by the laws of the place from which the fugitive flees", "death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State," for "imprisonment in a penitentiary", and required that prosecutions must be upon the formal written approval of the Attorney General or an Assistant Attorney General, which function may not be delegated.

1956—Act Apr. 6, 1956, added words ", arson punishable as a felony" after "assault with a dangerous weapon".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Apr. 6, 1956, provided that: "The amendment made by the first section of this Act [to this section] shall take effect on the thirtieth day after the date of enactment of this Act [April 6, 1956]."

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue, generally, see rules 18 to 22, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property

(a) Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or (2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: *Provided, however,* That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any jurisdiction over any offense over which they would have jurisdiction in the absence of such section.

(Added Pub. L. 86-449, title II, § 201, May 6, 1960, 74 Stat. 86.)

CHAPTER 50—GAMBLING

Sec.
1081. Definitions.
1082. Gambling ships.
1083. Transportation between shore and ship; penalties.
1084. Transmission of wagering information; penalties.

HISTORICAL AND REVISION NOTES

This section [section 23 of act May 24, 1949] inserts a new chapter 50 (secs. 1081-1083) in title 18, U.S.C., incorporating, with slight changes in phraseology, most of the provisions of act of April 27, 1948 (ch. 235, 62 Stat. 200), which was not incorporated in title 18 when the revision was enacted. Subsection (e) of section 1 of such act, defining "United States", when used in a geographical sense, was omitted as covered by section 5 of such title 18. Section 4 of such act, which provided that nothing in such act "shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof, or to preclude action, otherwise valid, by any State or Territory with respect to the navigable waters within the boundaries of such State or Territory", was omitted as surplusage and unnecessary.

AMENDMENTS

1961—Pub. L. 87-216, § 3, Sept. 13, 1961, 75 Stat. 491 added item 1084.

1949—Act May 24, 1949, ch. 139, § 23, 63 Stat. 92, added chapter 50 and items 1081 to 1083.

§ 1081. Definitions

As used in this chapter:

The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments.

The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

The term "wire communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92, and amended Sept. 13, 1961, Pub. L. 87-216, § 1, 75 Stat. 491.)

AMENDMENTS

1961—Pub. L. 87-216 included the definition of "wire communication facility".

§ 1082. Gambling ships

(a) It shall be unlawful for any citizen or resident of the United States, or any other person who is on an American vessel or is otherwise under or within the jurisdiction of the United States, directly or indirectly—

(1) to set up, operate, or own or hold any interest in any gambling ship or any gambling establishment on any gambling ship; or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any person to bet or play at any such establishment,

if such gambling ship is on the high seas, or is an American vessel or otherwise under or

within the jurisdiction of the United States, and is not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, shall use, or knowingly permit the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92.)

§ 1083. Transportation between shore and ship; penalties

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions.

For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of $200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of $300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92.)

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(Added Pub. L. 87-216, § 2, Sept. 13, 1961, 75 Stat. 491.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

CHAPTER 51—HOMICIDE

Sec.
1111. Murder.
1112. Manslaughter.
1113. Attempt to commit murder or manslaughter.
1114. Protection of officers and employees of the United States.
1115. Misconduct or neglect of ship officers.
1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons.
1117. Conspiracy to murder.

AMENDMENTS

1976—Pub. L. 94-467, § 3, Oct. 8, 1976, 90 Stat. 1998, substituted "official guests, or internationally protected persons" for "or official guests" in item 1116.

1972—Pub. L. 92-539, title I, § 102, Oct. 24, 1972, 86 Stat. 1071, added items 1116 and 1117.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of murder, see section 2516 of this title.

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any

other kind or willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States.

Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(June 25, 1948, ch. 645, 62 Stat. 756.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 452, 454, 567 (Mar. 4, 1909, ch. 321, §§ 273, 275, 330, 35 Stat. 1143, 1152).

Section consolidates the punishment provision of sections 454 and 567 of title 18, U.S.C., 1940 ed., with section 452 of title 18, U.S.C., 1940 ed.

The provision of said section 454 for the death penalty for first degree murder was consolidated with section 567 of said title 18, by adding the words "unless the jury qualifies its verdict by adding thereto 'without capital punishment' in which event he shall be sentenced to imprisonment for life".

The punishment for second degree murder was changed and the phrase "for any term of years or for life" was substituted for the words "not less than ten years and may be imprisoned for life". This change conforms to a uniform policy of omitting the minimum punishment.

Said section 567 was not included in section 2031 of this title since the rewritten punishment provision for rape removes the necessity for a qualified verdict.

The special maritime and territorial jurisdiction provision was added in view of definitive section 7 of this title.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Assault with intent to murder, see section 113 of this title.

Bank robbery, murder in committing, see section 2113 of this title.

Death sentence, dissection of body may be prescribed, see section 3567 of this title.

Execution of death sentence, see section 3566 of this title.

High seas, citizen committing murder as pirate, see section 1652 of this title.

Indian country—

Jurisdiction of offenses committed by Indians, see section 3242 of this title.

Law governing offenses, see section 1153 of this title.

Limitations, capital offenses, see section 3281 of this title.

Mailing matter of character tending to incite murder, see section 1461 of this title.

Railroads, entering train to commit murder, see section 1991 of this title.

Venue, see section 3236 of this title.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Indictment for murder in the first degree—

Federal officer as victim, see form 1, Appendix to this title.

Offense committed on federal reservation, see form 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 1114, 1116, 1117, 1751 of this title; title 7 section 2146; title 15 section 1825; title 21 sections 461, 675, 1041; title 49 section 1472.

§ 1112. Manslaughter

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds;

Voluntary—Upon a sudden quarrel or heat of passion.

Involuntary—In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

Whoever is guilty of involuntary manslaughter, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 756.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 453, 454 (Mar. 4, 1909, ch. 321, §§ 274, 275, 35 Stat. 1143).

Section consolidates punishment provisions of sections 453 and 454 of title 18, U.S.C., 1940 ed.

The special maritime and territorial jurisdiction provision was added in view of definitive section 7 this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Indian country—

Jurisdiction of offenses committed by Indians, see section 3242 of this title.

Law governing offenses, see section 1153 of this title.

Venue, see section 3236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 1114, 1116, 1751 of this title; title 15 section 1825; title 21 section 1041; title 49 section 1472.

§ 1113. Attempt to commit murder or manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 756.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 456 (Mar. 4, 1909, ch. 321, § 277, 35 Stat. 1143).

Words "within the special maritime and territorial jurisdiction of the United States" were added in view of definitive section 7 of this title, and section was rearranged to more clearly express intent of existing law.

Mandatory punishment provision was rephrased in the alternative.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1116 of this title; title 49 section 1472.

§ 1114. Protection of officers and employees of the United States

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, or of the Department of Labor or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

(June 25, 1948, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, § 402(c), 66 Stat. 276; July 29, 1958, Pub. L. 85-568, title III, § 304(d), 72 Stat. 434; July 2, 1962, Pub. L. 87-518, § 10, 76 Stat. 132; Aug. 27, 1964, Pub. L. 88-493, § 3, 78 Stat. 610; July 15, 1965, Pub. L. 89-74, § 8(b), 79 Stat. 234; Aug. 2, 1968, Pub. L. 90-449, § 2, 82 Stat. 611; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(9), 84 Stat 777; Oct. 27, 1970, Pub. L. 91-513, title II, § 701(i)(1), 84 Stat. 1282; Dec. 29, 1970, Pub. L. 91-596, § 17(h)(1), 84 Stat. 1607; Oct. 26, 1974, Pub. L. 93-481, § 5, 88 Stat. 1456; May 11, 1976, Pub. L. 94-284, § 18, 90 Stat. 514; Oct. 21, 1976, Pub. L. 94-582, § 16, 90 Stat. 2883.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 253 (May 18, 1934, ch. 299, § 1, 48 Stat. 780; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, § 3, 49 Stat. 1940; Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391).

The section was extended to include United States judges, attorneys and their assistants, and officers of Federal, penal and correctional institutions in view of the obvious desirability of such protective legislation.

Employees of the Bureau of Animal Industry have been included in this section to complete the revision of section 118 of title 18, U.S.C., 1940 ed., which was consolidated with the assault provisions of section 254 of said title 18 and is now section 111 of this title. There seemed no sound reason for including such officers in the protection against assaults but excluding them from the homicide sections.

For like reasons the section was broadened to include officers or employees of the Secret Service or of the Bureau of Narcotics.

Changes in phraseology were made.

1949 ACT

This section [section 24] amends section 1114 of title 18, U.S.C., to conform more closely with the original statute from which it was derived.

AMENDMENTS

1976—Pub. L. 94-582 struck out "any employee of the Bureau of Animal Industry of the Department of Agriculture," following "the field service of the Bureau of Land Management," and inserted "or of the Department of Agriculture" following "or of the Department of Labor".

Pub. L. 94-284 inserted ", the Consumer Product Safety Commission," following "Department of Health, Education, and Welfare".

1974—Pub. L. 93-481 substituted "Drug Enforcement Administration" for "Bureau of Narcotics and Dangerous Drugs".

1970—Pub. L. 91-596 substituted "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions", for "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act".

Pub. L. 91-513 substituted "Bureau of Narcotics and Dangerous Drugs" for "Bureau of Narcotics".

Pub. L. 91-375 substituted "officer or employee of the Postal Service", for "postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department" following "Department of Justice,".

1968—Pub. L. 90-449 substituted "any postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department" for "any post-office inspector".

1965—Pub. L. 89-74 included any officer or employee of the Department of Health, Education, and Welfare designated by the Secretary of Health, Education, and Welfare to conduct investigations or inspections under the Federal Food, Drug, and Cosmetic Act.

1964—Pub. L. 88-493 inserted "or any security officer of the Department of State or the Foreign Service".

1962—Pub. L. 87-518 included employees of the Department of Agriculture performing any function con-

nected with any Federal or State program, or program of Puerto Rico, Guam, the Virgin Islands, or the District of Columbia, for control, eradication, or prevention of animal diseases.

1958—Pub. L. 85-568 included officers and employees of the National Aeronautics and Space Administration.

1952—Act June 27, 1952, substituted "any immigration officers" for "any immigrant inspector or any immigration patrol inspector".

1951—Act Oct. 31, 1951, substituted "the field service of the Bureau of Land Management" for "the field service of the Division of Grazing of the Department of the Interior".

1949—Act May 24, 1949, inserted "any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties".

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective July 15, 1965, see section 11 of Pub. L. 89-74.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of Justice, and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. United States Attorneys, Assistant United States Attorneys, United States marshals, and deputy marshals, referred to in this section, are officers within the Department of Justice, the Federal Bureau of Investigation, also referred to in this section, is a bureau of such Department, and officers and employees of United States penal or correctional institutions and immigration officials, also referred to in the section, are officers and employees within such Department.

The Bureau of Narcotics and Dangerous Drugs, including the office of Director thereof, in the Department of Justice was abolished by Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 2 of 1973 also created in the Department of Justice a single, comprehensive agency for the enforcement of drug laws to be known as the Drug Enforcement Administration, empowered the Attorney General to authorize the performance by officers, employees, and agencies of the Department of functions transferred to him, and directed the Attorney General to coordinate all drug law enforcement functions to assure maximum cooperation between the Drug Enforcement Administration, the Federal Bureau of Investigation, and the other units of the Department of Justice involved in drug law enforcement.

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees. by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Secret Service is an agency in the Treasury Department and the customs and internal revenue officials, referred to in this section, are officials in such Department.

All functions of all other officers of the Department of the Interior, and all functions of all agencies and employees of such Department, were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees. Officers and employees of the National Park Service, and of the Indian field service, referred to in this section, are officers and employees of the Department of the Interior.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a Savings Provision note under section 321 of Title 21, Food and Drugs.

LIFE IMPRISONMENT OR LESSER TERM FOR KILLING PERSON IN PERFORMANCE OF INVESTIGATIVE, INSPECTION, OR LAW ENFORCEMENT FUNCTIONS

Section 17(h)(2) of Pub. L. 91-596 provided that: "Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111 shall be punished by imprisonment for any term of years or for life."

IMMUNITY FROM CRIMINAL PROSECUTION

Section 5 of Pub. L. 88-493 which provided that nothing in Pub. L. 88-493, which amended this section and section 112 of this title, and enacted former section 170e-1 of Title 5, Government Organization and Employees, shall create immunity from criminal prosecution under the laws of any State, territory, possession, Puerto Rico, or the District of Columbia, is set out as a note under section 112 of this title.

CROSS REFERENCES

Assaulting, resisting, or impeding officers or employees designated in this section, see section 111 of this title.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Indictment for murder in the first degree of federal officer, see form 1, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 1117 of this title; title 7 sections 84, 87c, 2146; title 21 sections 461, 675; title 42 section 2000e-13.

§ 1115. Misconduct or neglect of ship officers

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 461 (Mar. 4, 1909, ch. 321, § 282, 35 Stat. 1144).

Section restores the intent of the original enactments, R.S. § 5344, and act Mar. 3, 1905, ch. 1454, § 5, 33 Stat. 1025, and makes this section one of general application. In the Criminal Code of 1909, by placing it in chapter 11, limited to places within the special maritime and territorial jurisdiction of the United States, such original intent was inadvertently lost as indicated by the entire absence of report or comment on such limitation.

§ 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(b) For the purposes of this section:

(1) "Family" includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) "Foreign government" means the government of a foreign country, irrespective of recognition by the United States.

(3) "Foreign official" means—

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) "Internationally protected person" means—

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

(5) "International organization" means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288).

(6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(c) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(Added Pub. L. 92-539, title I, § 101, Oct. 24, 1972, 86 Stat. 1071, and amended Pub. L. 94-467, § 2, Oct. 8, 1976, 90 Stat. 1997.)

AMENDMENTS

1976—Pub. L. 94-467 substituted "official guests, or internationally protected persons" for "or official guests" in the section catchline.

Subsec. (a). Pub. L. 94-467 inserted reference to internationally protected persons, section 1113 of this title, and the punishment for a person convicted of attempted murder.

Subsec. (b). Pub. L. 94-467 designated existing provision, relating to the definition of "foreign official" as par. (3)(A), (B), and added pars. (1), (2), (4), (5) and (6).

Subsec. (c). Pub. L. 94-467 substituted provision permitting the United States to exercise jurisdiction over an offense if the victim is an internationally protected person and the alleged offender is present within the United States for provision which defined "foreign government", "international organization", "family", and "official guest".

Subsec. (d). Pub. L. 94-467 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 112, 878, 970, 1117, 1201 of this title.

§ 1117. Conspiracy to murder

If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(Added Pub. L. 92-539, title I, § 101, Oct. 24, 1972, 86 Stat. 1071.)

CHAPTER 53—INDIANS

Sec.
1151. Indian country defined.
1152. Laws governing.
1153. Offenses committed within Indian country.
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1155. Intoxicants dispensed on school site.
1156. Intoxicants possessed unlawfully.
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1162. State jurisdiction over offenses committed by or against Indians in the Indian country.
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1164. Destroying boundary and warning signs.
1165. Hunting, trapping, or fishing on Indian land.

AMENDMENTS

1960—Pub. L. 86-634, § 3, July 12, 1960, 74 Stat. 469 added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, § 1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, § 1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, § 1, 67 Stat. 588, added item 1162.

CROSS REFERENCES

Government employee having interest in Indian contracts, see section 437 of this title.

Receiving money in connection with Indian contracts for services, see section 438 of this title.

Unauthorized Indian enrollment contracts, or receiving money in connection with such contracts, see section 439 of this title.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the boarders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§ 2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§ 2145, 2146 (U.S.C., title 25, §§ 217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S.* v. *McBratney*, 104 U.S. 622 and *Draper* v. *U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, "Indian country" was defined but once. (See act June 30, 1834, ch. 161, § 1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S.* v. *McGowan*, 58 S.Ct. 286, 302 U.S. 535, following *U.S.* v. *Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly* v. *U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty* v. *U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser's note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S.* v. *Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase "except as otherwise provided in sections 1154 and 1156 of this title", incorporates in this section the limitations of the term "Indian country" which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of the term Indian country which are contained in sections 1154 and 1156 of this title.

CROSS REFERENCES

Destroying boundary and warning signs, see section 1164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1164 of this title; title 15 sections 1175, 1243.

[1] Pub. L. 85-86, July 10, 1957, 71 Stat. 277, which repealed section 1157 of this title, did not amend analysis to reflect the repeal.

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

Historical and Revision Notes

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§ 1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser's note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

Cross References

State jurisdiction over offenses committed by or against Indians in the Indian country, see section 1162 of this title.

Section Referred to in Other Sections

This section is referred to in section 1162 of this title.

§ 1153. Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As used in this section, the offenses of burglary and incest shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

In addition to the offenses of burglary and incest, any other of the above offenses which are not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, § 26, 63 Stat. 94; Nov. 2, 1966, Pub. L. 89-707, § 1, 80 Stat. 1100; Apr. 11, 1968, Pub. L. 90-284, title V, § 501, 82 Stat. 80; May 29, 1976, Pub. L. 94-297, § 2, 90 Stat. 585.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., §§ 548, 549 (Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

Section consolidates said sections 548 and 549 of title 18, U.S.C., 1940 ed. Section 548 of said title covered 10 crimes. Section 549 of said title covered the same except robbery and incest.

The 1932 amendment of section 548 of title 18, U.S.C., 1940 ed., constituting the last paragraph of the section, is omitted and section 549 of said title to which it applied likewise is omitted. The revised section therefore suffices to cover prosecution of the specific offenses committed on all reservations as intended by Congress.

Words "Indian country" were substituted for language relating to jurisdiction extending to reservations and rights-of-way, in view of definitive section 1151 of this title.

Paul W. Hyatt, president, board of commissioners, Idaho State Bar, recommended that said section 548 be considered with other sections in title 25, Indians, U.S.C., 1940 ed., and revised to insure certainty as to questions of jurisdiction, and punishment on conviction. Insofar as the recommendation came within the scope of this revision, it was followed.

The proviso in said section 548 of title 18, U.S.C., 1940 ed., which provided that rape should be defined in accordance with the laws of the State in which the offense was committed, was changed to include burglary so as to clarify the punishment for that offense.

Venue provisions of said section 548 of title 18, U.S.C., 1940 ed., are incorporated in section 3242 of this title.

Section 549 of title 18, U.S.C., 1940 ed., conferred special jurisdiction on the United States District Court for South Dakota of all crimes of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny committed within the limits of any Indian reservation within the State, whether by or against Indians or non-Indians. The Act of February 2, 1903, 32 Stat. 793, from which said section 549 was derived, accepted the cession by South Dakota of such jurisdiction.

The effect of revised sections 1151, 1152, and 1153 of this title is to deprive the United States District Court for the District of South Dakota of jurisdiction of offenses on Indian reservations committed by non-Indians against non-Indians and to restore such jurisdiction to the courts of the State of South Dakota as in other States. This reflects the views of the United States attorney, George Philip, of the district of South Dakota.

Minor changes were made in translation and phraseology.

1949 Act

This section [section 26] removes an ambiguity in section 1153 of title 18, U.S.C., by eliminating the provision that the crime of rape in the Indian country is to be punished in accordance with the law of the State where the offense was committed, leaving the definition of the offense to be determined by State law, but providing that punishment of rape of an Indian by an Indian is to be by imprisonment at the discretion of the court. The offense of rape, other than rape of an Indian by an Indian within the Indian country, is covered by section 2031 of title 18, U.S.C., and the offense of burglary by sections 1152 and 3242 of such title.

Amendments

1976—Pub. L. 94-297 made changes in phraseology, added the offense of kidnapping to the enumerated list of offenses subjecting any Indian to the same laws and penalties as all other persons, struck out applica-

bility to assault with a dangerous weapon and assault resulting in serious bodily injury from paragraph covering the offenses of burglary and incest only, and substituted paragraph, relating to offenses in addition to offenses of burglary and incest, for paragraph relating to offenses of rape and assault with intent to commit rape.

1968—Pub. L. 90-284 added the offense of assault resulting in serious bodily injury.

1966—Pub. L. 89-707 added the offenses of carnal knowledge and assault with intent to commit rape, defined and proscribed the punishment for assault with intent to commit rape in accordance with the laws of the State in which the offense was committed, and required assault with a dangerous weapon and incest to be defined and punished in accordance with the laws of the State in which the offense was committed.

1949—Act May 24, 1949, eliminated the provision that the crime of rape is to be punished in accordance with the law of the State where the offense was committed and in lieu inserted provision leaving punishment up to the discretion of the court.

SHORT TITLE

Section 1 of Pub. L. 94-297 provided: "That this Act [amending this section and sections 113 and 3242 of this title] may be cited as the 'Indian Crimes Act of 1976'."

CROSS REFERENCES

Jurisdiction—
Conferred on State of Kansas, see section 3243 of this title.
Of offenses, see section 3242 of this title.
State jurisdiction over offenses committed by or against Indians in the Indian country, see section 1162 of this title.
Wire or oral communications, authorization for interception, to provide evidence of murder or robbery, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1162, 3242 of this title.

§ 1154. Intoxicants dispensed in Indian country

(a) Whoever sells, gives away, disposes of, exchanges, or barters any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than $500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attache, or employee of the Army of the United States who barters, donates, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

(c) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, § 27, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 242, 244a, 249, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. § 2139; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 4, 1884, ch. 180, § 1, 23 Stat. 94; July 23, 1892, ch. 234, 27 Stat. 260; Mar. 2, 1917, ch. 146, § 17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, § 1, 52 Stat. 696).

Section consolidates sections 241, 242, 244a, and 249 of title 25, U.S.C., 1940 ed., Indians. The portion of section 241 of said title which defined the substantive offense became subsection (a); the portion relating to the scope of the term "Indian country" was omitted as unnecessary in view of definition of "Indian country" in section 1151 of this title; the portion of section 241 of said title excepting liquors introduced by the War Department became subsection (c), as limited by section 249 of said title; the portion respecting making complaint in county of offense, and with reference to arraignment, was omitted as covered by rule 5 of the Federal Rules of Criminal Procedure; and the remainder of section 241 of said title was incorporated in section 1156 of this title.

Section 254 of title 25, U.S.C., 1940 ed., Indians, was omitted as covered by this section and section 1156 of this title. That section was enacted in 1934 and excluded from the Indian liquor laws lands outside reservations where the land was no longer held by Indians under a trust patent or a deed or patent containing restrictions against alienation. Such enactment was prior to the June 15, 1938, amendment of section 241 of title 25, U.S.C., 1940 ed., Indians, in which the term "Indian country" was defined as including allotments where the title was held in trust by the Government or where it was inalienable without the consent of the United States. This provision, by implication, excluded cases where there was no trust or restriction on alienation and thereby achieved the same result as section 254 of title 25, U.S.C., 1940 ed., Indians. That amendment also repealed the act of Jan. 30, 1897, referred to in section 254 of title 25, U.S.C., 1940 ed., Indians. Insofar as the reference in section 254 of said title to "special Indian liquor laws" included section 244 of title 25, U.S.C., 1940 ed., Indians, the definition of Indian country in section 1151 of this title covers section 254 of title 25, U.S.C., 1940 ed., Indians.

Words "or agent" were deleted as there have been no Indian agents since 1908. See section 64 of title 25, U.S.C., 1940 ed., Indians, and note thereunder.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for nonpayment of fine was deleted. This change was also recommended by United States District Judge T. Blake Kennedy on the ground that, otherwise, section would

be practically meaningless since, in most cases, offenders cannot pay a fine.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

Subsection (a) of this section [section 27(a)] substitutes "Department of the Army" for "War Department", in subsection (b) of section 1154 of title 18, U.S.C., to conform to such redesignation by act July 26, 1947 (ch. 343, title 11, § 205(a), 61 Stat. 501 (5 U.S.C., 1946 ed., § 181-1)). Subsection (b) of this section [section 27(b)] adds subsection (c) to such section 1154 in order to conform it and section 1156 more closely to the laws relating to intoxicating liquor in the Indian country as they have heretofore been construed.

AMENDMENTS

1949—Subsec. (b). Act May 24, 1949, § 27(a), substituted "Department of the Army" for "War Department".

Subsec. (c). Act May 24, 1949, § 27(b), added subsec. (c).

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Application of Indian liquor laws, see section 1161 of this title.

Indian country, general definition, see section 1151 of this title.

Possession as prima facie evidence, see section 3488 of this title.

Searches, seizures, and forfeitures; Indians as competent witnesses, see section 3113 of this title.

Seizure and forfeiture of vehicles, see section 3618 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1161, 3113 of this title.

§ 1155. Intoxicants dispensed on school site

Whoever, on any tract of land in the former Indian country upon which is located any Indian school maintained by or under the supervision of the United States, manufactures, sells, gives away, or in any manner, or by any means furnishes to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, except for scientific, sacramental, medicinal, or mechanical purposes, whether medicated or not, or who carries, or in any manner has carried, into such area any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into such area any of such liquors or drinks, shall be fined not more than $500 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 758.)

HISTORICAL AND REVISION NOTES

Based on sections 241a, 244a, of title 25, U.S.C., 1940 ed., Indians (Mar. 1, 1895, ch. 145, § 8, 28 Stat. 697; Mar. 5, 1934, ch. 43, 48 Stat. 396.)

Section consolidates sections 241a and 244a of title 25, U.S.C., 1940 ed., Indians. The effect of section 244a of said title in repealing section 241a of said title, except as to lands upon which Indian schools are maintained, was to continue prohibiting the dispensing of liquor in such areas.

The words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The minimum punishment provision was omitted to conform to the policy adopted in revision of the 1909 Criminal Code.

Mandatory punishment provision was rephrased in the alternative.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

§ 1156. Intoxicants possessed unlawfully

Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, shall, for the first offense, be fined not more than $500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than $2,000 or imprisoned not more than five years, or both.

The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, § 28, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 244, 244a, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. 2139; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, § 1, 52 Stat. 696).

The revision of section 244 of title 25, U.S.C., 1940 ed., Indians, conforms with the effect thereon of sections 241, 244a, and 254 of said title.

The provisions relating to scope of term "Indian country" were omitted as unnecessary in view of definition of "Indian country" in section 1151 of this title.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for nonpayment of fine was deleted. Such change was also recommended by United States District Judge T. Blake Kennedy. (See reviser's note under section 1154 of this title.)

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 28] adds to section 1156 of title 18, U.S.C., a paragraph to conform this section and section 1154 of such title more closely to the laws re-

lating to intoxicating liquors in the Indian country as they have been heretofore construed.

AMENDMENTS

1949—Act May 24, 1949, added the last paragraph.

CROSS REFERENCES

Application of Indian liquor laws, see section 1161 of this title.
Indian country defined, see section 1151 of this title.
Possession as prima facie evidence, see section 3488 of this title.
Searches, seizures, and forfeitures; Indians as competent witnesses, see section 3113 of this title.
Seizure and forfeiture of vehicles, see section 3618 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1161, 3113 of this title.

[§ 1157. Repealed. Pub. L. 85-86, July 10, 1957, 71 Stat. 277]

Section, acts June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, § 29, 63 Stat. 94; Aug. 15, 1953, ch. 506, § 2(a), 67 Stat. 590, prohibited purchase of Indian-owned livestock subject to unpaid loans from Federal revolving fund or from tribal loan funds.

§ 1158. Counterfeiting Indian Arts and Crafts Board trade mark

Whoever counterfeits or colorably imitates any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior as provided in section 305a of Title 25, or, except as authorized by the Board, affixes any such Government trade mark, or knowingly, willfully, and corruptly affixes any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products; or

Whoever knowingly makes any false statement for the purpose of obtaining the use of any such Government trade mark—

Shall be fined not more than $500 or imprisoned not more than six months, or both; and shall be enjoined from further carrying on the act or acts complained of.

(June 25, 1948, ch. 645, 62 Stat. 759.)

HISTORICAL AND REVISION NOTES

Based on section 305d of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Maximum fine was changed from $2,000 to $500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser's note under section 1157 of this title.)

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950 §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1159. Misrepresentation in sale of products

Whoever willfully offers or displays for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 759.)

HISTORICAL AND REVISION NOTES

Based on section 305e of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The last paragraph of section 305e of title 25, U.S.C., 1940 ed., relating to duty of district attorney to prosecute violations of such section, will be incorporated in title 28, U.S. Code.

Maximum fine of $2,000 was changed to $500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser's note under section 1157 of this title.)

Minor changes were made in phraseology.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 1160. Property damaged in committing offense

Whenever a white person, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly Indian the judgment of conviction shall include a sentence that the defendant pay to the Indian owner a sum equal to twice the just value of the property so taken, injured, or destroyed.

If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

(June 25, 1948, ch. 645, 62 Stat. 759.)

HISTORICAL AND REVISION NOTES

Based on sections 227, 228 of title 25, U.S.C., 1940 ed., Indians (R.S. 2154, 2155).

Section consolidates said sections 227 and 228 of title 25, U.S.C., 1940 ed., Indians, with such changes in phraseology as were necessary to effect consolidation.

The phrase "or whose person was injured," which followed the words "friendly Indian to whom the property may belong," was deleted as meaningless.

§ 1161. Application of Indian liquor laws

The provisions of sections 1154, 1156, 3113, 3488, and 3618, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

(Added Aug. 15, 1953, ch. 502, § 2, 67 Stat. 586.)

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, § 2, 67 Stat. 588, and amended Aug. 24, 1954, ch. 910, § 1, 68 Stat. 795; Aug. 8, 1958, Pub. L. 85-615, § 1, 72 Stat. 545; Nov. 25, 1970, Pub. L. 91-523, §§ 1, 2, 84 Stat. 1358.)

Amendments

1970—Subsec. (a). Pub. L. 91-523, § 1, substituted provisions relating to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, and certain excepted areas, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub. L. 91-523, § 2, added "as areas over which the several States have exclusive jurisdiction" following "subsection (a) of this section".

1958—Subsec. (a). Pub. L. 85-615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

Admission of Alaska as State

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Cross References

Amendment of State Constitutions to remove legal impediments and effective date thereof, see note set out under section 1360 of Title 28, Judiciary and Judicial Procedure.

Consent of United States to other States to assume jurisdiction, see note set out under section 1360 of Title 28, Judiciary and Judicial Procedure.

Retrocession of criminal jurisdiction by State, see section 1323 of Title 25, Indians.

Section Referred to in Other Sections

This section is referred to in title 25 section 1323.

§ 1163. Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined not more than $5,000, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000, or imprisoned not more than one year, or both.

As used in this section, the term "Indian tribal organization" means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

(Added Aug. 1, 1956, ch. 822, § 2, 70 Stat. 792.)

§ 1164. Destroying boundary and warning signs

Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a Government agency (1) to indicate the boundary of an Indian reservation or of any Indian

country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined not more than $250 or imprisoned not more than six months, or both.

(Added Pub. L. 86-634, § 1, July 12, 1960, 74 Stat. 469.)

§ 1165. Hunting, trapping, or fishing on Indian land

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than $200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(Added Pub. L. 86-634, § 2, July 12, 1960, 74 Stat. 469.)

CHAPTER 55—KIDNAPING

Sec.
1201. Kidnaping.
1202. Ransom money.

AMENDMENTS

1972—Pub. L. 92-539, title II, § 202, Oct. 24, 1972, 86 Stat. 1072, substituted "Kidnaping" for "Transportation" in item 1201.

TITLE 18 APPENDIX §§ 1201 TO 1203

Sections 1201 to 1203 of Pub. L. 90-351, 82 Stat. 236, as amended, relating to Unlawful Possession or Receipt of Firearms, are set out in the Appendix to this title.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of kidnaping, see section 2516 of this title.

§ 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

(1) the person is willfully transported in interstate or foreign commerce;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)); or

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title,

shall be punished by imprisonment for any term of years or for life.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported to interstate or foreign commerce.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any terms of years or for life.

(d) Whoever attempts to violate subsection (a)(4) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(June 25, 1948, ch. 645, 62 Stat. 760; Aug. 6, 1956, ch. 971, 70 Stat. 1043; Oct. 24, 1972, Pub. L. 92-539, title II, § 201, 86 Stat. 1072; Oct. 8, 1976, Pub. L. 94-467, § 4, 90 Stat. 1998.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 408a, 408c (June 22, 1932, ch. 271, §§ 1, 3, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 781, 782).

Section consolidates sections 408a and 408c of title 18 U.S.C., 1940 ed.

Reference to persons aiding, abetting or causing was omitted as unnecessary because such persons are made principals by section 22 of this title.

Words "upon conviction" were omitted as surplusage, because punishment cannot be imposed until a conviction is secured.

Direction as to confinement "in the penitentiary" was omitted because of section 4082 of this title which commits all prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

The phrase "for any term of years or for life" was substituted for the words "for such term of years as the court in its discretion shall determine" which appeared in said section 408a of Title 18, U.S.C., 1940 ed. This change was made in order to remove all doubt as to whether "term of years" includes life imprisonment.

Minor changes were made in phraseology.

AMENDMENTS

1976—Subsec. (a)(4). Pub. L. 94-467, § 4(a), substituted provision which includes acts committed against an internationally protected person and an official guest as defined in section 1116(b) of this title for provision which included acts committed against an official guest as defined in section 1116(c) of this title.

Subsecs. (d) to (f). Pub. L. 94-467, § 4(b), added subsecs. (d) to (f).

1972—Subsec. (a). Pub. L. 92-539 substituted "Kidnaping" for "Transportation" in the section catchline and, in subsec. (a), extended the jurisdictional base to include acts committed within the special maritime, territorial, and aircraft jurisdiction of the United States, and to include acts committed against foreign officials and official guests, and struck out provisions relating to death penalty.

Subsec. (b). Pub. L. 92-539 added reference to subsec. (a)(1).

Subsec. (c). Pub. L. 92-539 substituted "by imprisonment for any term of years or for life" for "as provided in subsection (a)".

1956—Subsec. (b). Act Aug. 6, 1956, substituted "twenty-four hours" for "seven days".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 878, 1202 of this title.

§ 1202. Ransom money

Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 760.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408c-1 (June 22, 1932, ch. 271, § 4, as added Jan. 24, 1936, ch. 29, 49 Stat. 1099).

Words "in the penitentiary" after "imprisoned" were omitted in view of section 4082 of this title committing prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

Minor changes were made in phraseology.

CHAPTER 57—LABOR

Sec.
1231. Transportation of strikebreakers.
1232.[1] Enticement of workman from armory or arsenal.

§ 1231. Transportation of strikebreakers

Whoever willfully transports in interstate or foreign commerce any person who is employed or is to be employed for the purpose of obstructing or interfering by force or threats with (1) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor, or (2) the exercise by employees of any of the rights of self-organization or collective bargaining; or

Whoever is knowingly transported or travels in interstate or foreign commerce for any of the purposes enumerated in this section—

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

This section shall not apply to common carriers.

(June 25, 1948, ch. 645, 62 Stat. 760; May 24, 1949, ch. 139, § 30, 63 Stat. 94.)

[1] Act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, which repealed section 1232 of this title, did not amend analysis to reflect the repeal.

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 407a (June 24, 1936, ch. 746, 49 Stat. 1899; June 29, 1938, ch. 813, 52 Stat. 1242).

Language designating offense as felony was omitted in uniformity with definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Words "and shall, upon conviction" were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Reference to persons aiding, abetting or causing was omitted as such persons are made principals by section 2 of this title.

Changes were made in phraseology and arrangement, but without change of substance.

1949 ACT

This section [section 30] corrects a typographical error in section 1231 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, substituted in the second par. "or travels in" for "in or travels".

[§ 1232. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641]

Section, act June 25, 1948, ch. 645, 62 Stat. 761, prohibited enticement of workman from armory or arsenal.

CHAPTER 59—LIQUOR TRAFFIC

Sec.
1261. Enforcement, regulations, and scope.
1262. Transportation into State prohibiting sale.
1263. Marks and labels on packages.
1264. Delivery to consignee.
1265. C.O.D. shipments prohibited.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3615 of this title.

§ 1261. Enforcement, regulations, and scope

(a) The Secretary of the Treasury shall enforce the provisions of this chapter. Regulations to carry out its provisions shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

(b) This chapter shall not apply to the Canal Zone.

(June 25, 1948, ch. 645, 62 Stat. 761; May 24, 1949, ch. 139, § 31, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 222, 223(b), 225 and 226 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 5, 10, 49 Stat. 1929, 1930).

Changes were made in phraseology and arrangement.

1949 ACT

This section [section 31] corrects a typographical error in section 1261 of title 18, U.S.C.

AMENDMENTS

1949—Subsec. (b). Act May 24, 1949, substituted subsection symbol "(b)" for "(d)".

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employ-

ees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Forfeiture of liquors and related property, see section 3615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3615 of this title.

§ 1262. Transportation into state prohibiting sale

Whoever imports, brings, or transports any intoxicating liquor into any State, Territory, District, or Possession in which all sales, except for scientific, sacramental, medicinal, or mechanical purposes, of intoxicating liquor containing more than 4 per centum of alcohol by volume or 3.2 per centum of alcohol by weight are prohibited, otherwise than in the course of continuous interstate transportation through such State, Territory, District, or Possession or attempts so to do, or assists in so doing,

Shall (1) If such liquor is not accompanied by such permits, or licenses therefor as may be required by the laws of such State, Territory, District, or Possession or (2) if all importation, bringing, or transportation of intoxicating liquor into such State, Territory, District, or Possession is prohibited by the laws thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

In the enforcement of this section, the definition of intoxicating liquor contained in the laws of the respective States, Territories, Districts, or Possessions shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited therein.

(June 25, 1948, ch. 645, 62 Stat. 761; May 24, 1949, ch. 139, § 32, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 222, 223 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 2, 3, 49 Stat. 1928).

Section consolidates subsection (a) of section 222 with section 223, of title 27, U.S.C., 1940 ed.

Words "or 3.2 per centum of alcohol by weight" were inserted after "volume." Such words conform with *Flippin* v. *U.S.* (1941, 121 F. 2d 742, 744, certiorari denied, 62 S. Ct. 184, 314 U.S. 677, 86 L. Ed. 542); *Robason* v. *U.S.* (1941, 122 F. 2d 991); *Dolloff* v. *U.S.* (1941, 121 F. 2d 157, certiorari denied, 62 S. Ct. 108, 314 U.S. 626, 86 L. Ed. 503, rehearing denied, 62 S. Ct. 178, 314 U.S. 710, 86 L. Ed. 566); and *Tucker* v. *U.S.* (1941, 123 F. 2d 280).

Those cases overruled *Arnold* v. *U.S.* (1940, 115 F. 2d 523) and Gregg v. U.S. (1940, 116 F. 2d 609) and established that preservation of the congressional intent which requires addition of the inserted language.

Subsection (b) of section 223 of title 27, U.S.C., 1940 ed., has been reworded to apply the definition of intoxicating liquor contained in the laws of the respective States to this section only, in accordance with administrative interpretation. Said section 223 was derived from section 3 of the Liquor Enforcement Act of 1936 (Act June 25, 1936, ch. 815, 49 Stat. 1928), which was enacted for the protection of dry States. As originally enacted, its provisions relating to such definition also embraced the interstate commerce liquor laws from which sections 1263–1265 of this title were derived. In the enforcement of the latter, however, their own definitions have been applied and not the definitions of the States into which or through which the liquor was shipped.

Words "Territory, District, or Possession" were inserted after "State", to conform with the definition of "State" given in said section 222 of title 27, U.S.C., 1940 ed. Such section, including subsection (b) thereof, is also incorporated in section 3615 of this title.

Words "be guilty of a misdemeanor and shall" were omitted in view of definitive section 1 of this title.

Minor changes were made throughout in arrangement and phraseology.

1949 ACT

This section [section 32] corrects a typographical error in section 1262 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, substituted in last par. "Districts" for "District".

CROSS REFERENCES

Forfeiture of liquors and related property, see section 3615 of this title.

Possession of liquor in Indian country, see section 1156 of this title.

Sale of liquor in Indian country, see section 1154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3615 of this title.

§ 1263. Marks and labels on packages

Whoever knowingly ships into any place within the United States any package containing any spiritous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 761; Sept. 26, 1968, Pub. L. 90–518, § 1, 82 Stat. 872.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 390 (Mar. 4, 1909, ch. 321, § 240, 35 Stat. 1137; June 25, 1936, ch. 815, § 8, 49 Stat. 1930.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

References to Territory, District, etc., were revised and same changes made as in section 1264 of this title.

The provision that "such liquor shall be forfeited to the United States" was omitted as covered by section 3615 of this title, which was derived from section 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors.

The provision that such liquor "may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law" was likewise omitted as covered by section 3615 of this title, which provides for seizure and forfeiture under the internal revenue laws rather than under provisions of

law "for the seizure and forfeiture of property imported into the United States contrary to law" or, in other words, rather than under the customs laws. Section 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors, on which said section 3615 of this title is based, was derived from the Liquor Enforcement Act of 1936 (Act June 25, 1936, ch. 815, 49 Stat. 1928). Said section 224 included, in its coverage, section 390 of title 18, U.S.C., 1940 ed., on which this revised section is based, even though the Liquor Enforcement Act of 1936, in another section thereof, in amending said section 390, retained the provision that seizures and forfeitures thereunder should be under the customs laws. By eliminating this conflicting provision, a uniform procedure for seizures and forfeitures, under the internal revenue laws, is established under said section 3615 of this title.

AMENDMENTS

1968—Pub. L. 90-518 deleted "of or package" following "any package" and substituted "shipment is accompanied by copy of a bill of lading, or other document showing" for "package is so labeled on the outside cover as to plainly show".

EFFECTIVE DATE OF 1968 AMENDMENT

Section 3 of Pub. L. 90-518 provided that: "This Act [amending this section] shall become effective ninety days after the date of its enactment [Sept. 26, 1968]."

CONGRESSIONAL DISCLAIMER OF INTENT TO PREEMPT STATE REGULATION OF SHIPMENTS OF INTOXICATING LIQUOR

Section 2 of Pub. L. 90-518 provided that: "Nothing contained in this Act [amending this section] shall be construed as indicating an intent on the part of Congress to deprive any State of the power to enact additional prohibitions with respect to the shipment of intoxicating liquors."

CROSS REFERENCES

Forfeiture of liquors and related property, see section 3615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3615 of this title.

§ 1264. Delivery to consignee

Whoever, being an officer, agent, or employee of any railroad company, express company, or other common carrier, knowingly delivers to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, or other fermented liquor or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, which has been shipped into any place within the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 761.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 388 (Mar. 4, 1909, ch. 321, § 238, 35 Stat. 1136; June 25, 1936, ch. 815, § 6, 49 Stat. 1929).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof," which appeared twice, were omitted. See section 5 of this title defining the "United States."

Minor changes were made in phraseology.

CROSS REFERENCES

Forfeiture of liquors and related property, see section 3615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3615 of this title.

§ 1265. C.O.D. shipments prohibited

Any railroad or express company, or other common carrier which, or any person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, into any State, Territory, District or Possession of the United States, which prohibits the delivery or sale therein of such liquor, collects the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or in any manner acts as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 762.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 389 (Mar. 4, 1909, ch. 321, § 239, 35 Stat. 1136; June 25, 1936, ch. 815, § 7, 49 Stat. 1929).

Changes similar to those made in section 1264 of this title were also made in this section.

CROSS REFERENCES

Forfeiture of liquors and related property, see section 3615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3615 of this title.

CHAPTER 61—LOTTERIES

Sec.
1301. Importing or transporting lottery tickets.
1302. Mailing lottery tickets or related matter.
1303. Postmaster or employee as lottery agent.[1]
1304. Broadcasting lottery information.
1305. Fishing contests.
1306. Participation by financial institutions.
1307. State-conducted lotteries.

AMENDMENTS

1975—Pub. L. 93-583, § 2, Jan. 2, 1975, 88 Stat. 1916, added item 1307.

1967—Pub. L. 90-203, § 5(b), Dec. 15, 1967, 81 Stat. 611, added item 1306.

1950—Act Aug. 16, 1950, ch. 722, § 2, 64 Stat. 452, added item 1305.

1949—Act May 24, 1949, ch. 139, § 33, 63 Stat. 94, substituted "as" for "at" in item 1303.

§ 1301. Importing or transporting lottery tickets

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in

[1] Section catchline was not amended to conform to change made in the text by Pub. L. 91-375.

interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift, enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than $1,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 762.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 387 (Mar. 4, 1909, ch. 321, § 237, 35 Stat. 1136).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for involved enumeration of places, thus permitting section to be condensed and simplified without change of meaning. See definitive section 10 of this title.

The rewritten punishment provision is in lieu of the following: "for the first offense, be fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years". There seems no point in fixing a punishment for a second offense less than that for the first offense.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1307 of this title.

§ 1302. Mailing lottery tickets or related matter

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title—

Shall be fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

(June 25, 1948, ch. 645, 62 Stat. 762; Oct. 31, 1951, ch. 655, § 29, 65 Stat. 721; Sept. 13, 1961, Pub. L. 87-218, § 2, 75 Stat. 492.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 336 (Mar. 4, 1909, ch. 321, § 213, 35 Stat. 1129).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Venue provision was omitted as covered by sections 3231 and 3237 of this title.

Minor changes were made in arrangement and phraseology.

AMENDMENTS

1961—Pub. L. 87-218 inserted sixth paragraph relating to articles described in section 1953 of this title.

1951—Act Oct. 31, 1951, substituted at end of opening clause a colon for a semicolon.

CROSS REFERENCES

Exclusion of lottery matter from mails, see section 3005 of Title 39, Postal Service.

Postal service, offenses affecting, see section 1691 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1307 of this title; title 39 sections 3001, 3003.

§ 1303. Postmaster or employee as lottery agent

Whoever, being an officer or employee of the Postal Service, acts as agent for any lottery office, or under color of purchase or otherwise, vends lottery tickets, or knowingly sends by mail or delivers any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than $100 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(10), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18 U.S.C., 1940 ed., § 337 (Mar. 4, 1909, ch. 321, § 214, 35 Stat. 1130). Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "an officer or employee of in Postal Service" for "a postmaster or other person employed in the Postal Service".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established thereby by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1307 of this title.

§ 1304. Broadcasting lottery information

Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

(June 25, 1948, ch. 645, 62 Stat. 763.)

HISTORICAL AND REVISION NOTES

Based on section 316 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs (June 19, 1934, ch. 652, § 316, 48 Stat. 1088).

Words "upon conviction thereof" were deleted as surplusage since punishment can be imposed only after a conviction.

Minor changes were made in phraseology.

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1307, 3401 of this title; title 47 sections 312, 503.

§ 1305. Fishing contests

The provisions of this chapter shall not apply with respect to any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event.

(Added Aug. 16, 1950, ch. 722, § 1, 64 Stat. 451.)

§ 1306. Participation by financial institutions

Whoever knowingly violates section 5136A of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, section 20 of the Federal Deposit Insurance Act, or section 410 of the National Housing Act shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Added Pub. L. 90-203, § 5(a), Dec. 15, 1967, 81 Stat. 611.)

REFERENCES IN TEXT

Section 5136A of the Revised Statutes of the United States, referred to in the text, is classified to section 25a of Title 12, Banks and Banking.

Section 9A of the Federal Reserve Act, referred to in the text, is classified to section 339 of Title 12.

Section 20 of the Federal Deposit Insurance Act, referred to in text, is classified to section 1829a of Title 12.

Section 410 of the National Housing Act, referred to in the text, is classified to section 1730c of Title 12.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90-203, set out as an Effective Date note under section 25a of Title 12, Banks and Banking.

§ 1307. State-conducted lotteries

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

(1) contained in a newspaper published in that State or in an adjacent State which conducts such a lottery, or

(2) broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under authority of State law.

(c) For the purposes of this section "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(d) For the purposes of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests.

(Added Pub. L. 93-583, § 1, Jan. 2, 1975, 88 Stat. 1916, and amended Pub. L. 94-525, § 1, Oct. 17, 1976, 90 Stat. 2478.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-525 inserted "or in an adjacent State which conducts such a lottery" following "State".

CHAPTER 63—MAIL FRAUD

Sec.
1341. Frauds and swindles.
1342. Fictitious name and address.[1]
1343. Fraud by wire, radio, or television.

AMENDMENTS

1952—Act July 16, 1952, ch. 879, § 18(b), 66 Stat. 722, added item 1343.

CROSS REFERENCES

Offenses affecting Postal Service, see section 1691 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 29 section 1111.

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other arti-

[1] So in original. Does not conform to section catchline.

cle, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; May 24, 1949, ch. 139, § 34, 63 Stat. 94; Aug. 12, 1970, Pub. L. 91-375, § (6)(j)(11), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 338 (Mar. 4, 1909, ch. 321, § 215, 35 Stat. 1130).

The obsolete argot of the underworld was deleted as suggested by Hon. Emerich B. Freed, United States district judge, in a paper read before the 1944 Judicial Conference for the sixth circuit in which he said:

A brief reference to § 1341, which proposes to reenact the present section covering the use of the mails to defraud. This section is almost a page in length, is involved, and contains a great deal of superfluous language, including such terms as "sawdust swindle, green articles, green coin, green goods and green cigars." This section could be greatly simplified, and now-meaningless language eliminated.

The other surplusage was likewise eliminated and the section simplified without change of meaning.

A reference to causing to be placed any letter, etc. in any post office, or station thereof, etc. was omitted as unnecessary because of definition of "principal" in section 2 of this title.

1949 ACT

This section [section 34] corrects a typographical error in section 1341 of title 18, U.S.C.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department".

1949—Act May 24, 1949, substituted "of" for "or" following "dispose".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Fictitious name or address used in frauds and swindles, see section 1342 of this title.

Postal Service, offenses against, see section 1691 et seq. of this title.

Seizure and disposition of nonmailable matter, see section 3001 of Title 39, Postal Service.

Use of fictitious, false or assumed name on mail to conduct, or assist in, activity in violation of this section, see section 3003 of Title 39.

Use of mails for purchase or sale of securities before a registration statement under "Securities Act, 1933" is in effect made unlawful, see section 77e of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1961 of this title; title 15 sections 78o, 80b-3; title 39 sections 3001, 3003.

§ 1342. Fictitious name or address

Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(12), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 339 (Mar. 4, 1909, ch. 321, § 216, 35 Stat. 1131).

The punishment language used in section 1341 of this title was substituted in lieu of the reference to it in this section.

Minor changes in phraseology were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department of the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Seizure and disposition of nonmailable matter, see section 3001 of Title 39, Postal Service.

Use of fictitious, false or assumed name on mail to conduct, or assist in, activity in violation of this section, see section 3003 of Title 39.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 78o, 80b-3; title 39 sections 3001, 3003.

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communications in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(Added July 16, 1952, ch. 879, § 18(a), 66 Stat. 722, and amended July 11, 1956, ch. 561, 70 Stat. 523.)

AMENDMENTS

1956—Act July 11, 1956, substituted "transmitted by means of wire, radio, or television communication in interstate or foreign commerce" for "transmitted by means of interstate wire, radio, or television communication".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 15 sections 78o, 80b-3; title 47 sections 312, 503.

CHAPTER 65—MALICIOUS MISCHIEF

Sec.
1361. Government property or contracts.
1362. Communication lines, stations or systems.
1363. Buildings or property within special maritime and territorial jurisdiction.
1364. Interference with foreign commerce by violence.

§ 1361. Government property or contracts

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, shall be punished as follows:

If the damage to such property exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both; if the damage to such property does not exceed the sum of $100, by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 764.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 82 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

The embezzlement and theft provisions of section 82 of title 18, U.S.C., 1940 ed., are now incorporated in section 641 of this title.

Words "or any corporation in which the United States of America is a stockholder" were omitted as unnecessary in view of definition of "agency" in section 6 of this title.

Designation of the place of confinement as "in a jail" was omitted because section 4082 of this title commits all prisoners to the custody of the Attorney General or his authorized representative, who shall designate the place of confinement. (See reviser's note under section 1 of this title.)

The smaller penalty for offenses involving $50 or less was extended to offenses involving $100 or less. The use of $50 as the dividing line between felonies and misdemeanors originated at a time when that sum was of much greater value than $100 is now.

The word "damage" was substituted twice for the word "value", and the definition of "value" was omitted as inapplicable to this section. These words and definition, however, are retained in that part of said section 82 which is now section 641 of this title.

Minor changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 1362. Communication lines, stations or systems

Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communication over any such line, or system, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.

(June 25, 1948, ch. 645, 62 Stat. 764; Sept. 26, 1961, Pub. L. 87-306, 75 Stat. 669.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 116 (Mar. 4, 1909, ch. 321, § 60, 35 Stat. 1099).

This section was extended to include radio and radio stations. Minor changes were made in phraseology.

AMENDMENTS

1961—Pub. L. 87-306 extended the provisions of the section to means of communication used or intended to be used for military or civil defense functions of the United States, made the provisions inapplicable to lawful strike activities, which do not injure any line or system used for such functions, and increased the punishment by fine from $1,000 to $10,000 and by imprisonment from 3 to 10 years.

§ 1363. Buildings or property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures or attempts to destroy or injure any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping, shall be fined not more than $1,000 or imprisoned not more than five years, or both, and if the building be a dwelling, or the life of any person be placed in jeopardy, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 464, 465 (Mar. 4, 1909, ch. 321, §§ 285, 286, 35 Stat. 1144).

Said sections were consolidated and rewritten both as to form and substance. The provisions relating to arson are incorporated in section 81 of this title. (See reviser's note under said section 81 of this title for explanation of changes.)

§ 1364. Interference with foreign commerce by violence

Whoever, with intent to prevent, interfere with, or obstruct or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States, injures or destroys, by fire or explosives,

such articles or the places where they may be while in such foreign commerce, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 381 (June 15, 1917, ch. 30, titles IV, XIII, § 1, 40 Stat. 221, 231; Mar. 28, 1940, ch. 72, § 4, 54 Stat. 79).

Mandatory punishment provisions were rephrased in the alternative.

Definition of the term "United States" was omitted and incorporated in section 5 of this title.

Minor verbal changes were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 67—MILITARY AND NAVY

Sec.
1381. Enticing desertion and harboring deserters.
1382. Entering military, naval, or Coast Guard property.
1383. Restrictions in military areas and zones.[1]
1384. Prostitution near military and naval establishments.
1385. Use of Army and Air Force as posse comitatus.

AMENDMENTS

1956—Act Aug. 10, 1956, ch. 1041, § 18(b), 70A Stat. 626, inserted item 1385.

§ 1381. Enticing desertion and harboring deserters

Whoever entices or procures, or attempts or endeavors to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aids any such person in deserting or in attempting to desert from such service; or

Whoever harbors, conceals, protects, or assists any such person who may have deserted from such service, knowing him to have deserted therefrom, or refuses to give up and deliver such person on the demand of any officer authorized to receive him—

Shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 94 (Mar. 4, 1909, ch. 321, § 42, 35 Stat. 1097).

Mandatory punishment provisions were changed to alternative.

Words "armed forces" were substituted for repeated references to military service, naval service, soldier and seamen.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1382. Entering military, naval, or Coast Guard property

Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation; or

Whoever reenters or is found within any such reservation, post, fort, arsenal, yard, station, or installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof—

Shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 765.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 97 (Mar. 4, 1909, ch. 321, § 45, 35 Stat. 1097; Mar. 28, 1940, ch. 73, 54 Stat. 80).

Reference to territory, Canal Zone, Puerto Rico and the Philippine Islands was omitted as covered by definition of United States in section 5 of this title.

Words "naval or Coast Guard" were inserted before "reservation" and words "yard, station, or installation" were inserted after "arsenal" in two places, so as to extend section to naval or Coast Guard property.

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Coast Guard, referred to in this section, was generally a service in the Treasury Department, but such Plan excepted from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard was operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

[§ 1383. Repealed. Pub. L. 94-412, title V, § 501(e), Sept. 14, 1976, 90 Stat. 1258]

Section, act June 25, 1948, ch. 645, 62 Stat. 765, dealt with criminal penalties for persons entering, remaining in, leaving, or committing any act in a military area or zone contrary to restrictions imposed by Executive Order or Secretary of the Army.

[1] Section 1383 was repealed by Pub. L. 94-412, title V, § 501(e), Sept. 14, 1976, 90 Stat. 1258, without the concurrent repeal of item 1383 in the analysis.

SAVINGS PROVISION

Repeal of this section by Pub. L. 94-412 not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94-412, set out as a Savings Provision note under section 1601 of Title 50, War and National Defense.

§ 1384. Prostitution near military and naval establishments

Within such reasonable distance of any military or naval camp, station, fort, post, yard, base, cantonment, training or mobilization place as the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or any two or all of them shall determine to be needful to the efficiency, health, and welfare of the Army, the Navy, or the Air Force, and shall designate and publish in general orders or bulletins, whoever engages in prostitution or aids or abets prostitution or procures or solicits for purposes of prostitution, or keeps or sets up a house of ill fame, brothel, or bawdy house, or receives any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure, or building, or permits any person to remain for the purpose of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building or leases or rents or contracts to lease or rent any vehicle, conveyance, place, structure or building, or part thereof, knowing or with good reason to know that it is intended to be used for any of the purposes herein prohibited shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The Secretaries of the Army, Navy, and Air Force and the Federal Security Administrator shall take such steps as they deem necessary to suppress and prevent such violations thereof, and shall accept the cooperation of the authorities of States and their counties, districts, and other political subdivisions in carrying out the purpose of this section.

This section shall not be construed as conferring on the personnel of the Departments of the Army, Navy, or Air Force or the Federal Security Agency any authority to make criminal investigations, searches, seizures, or arrests of civilians charged with violations of this section.

(June 25, 1948, ch. 645, 62 Stat. 765; May 24, 1949, ch. 139, § 35, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 518a (July 11, 1941, ch. 287, 55 Stat. 583; May 15, 1945, ch. 126, 59 Stat. 168; May 15, 1946, ch. 258, 60 Stat. 182).

The word "whoever" was substituted for the words "person, corporation, partnership, or association" in conformity with section 1 of title 1, U.S.C., 1940 ed., General Provisions, as amended and without change of substance.

The provisions with reference to punishment of persons subject to military or naval law as provided in the Articles of War and the Articles for the Government of the Navy were omitted, as was the exception of such persons from the punishment provisions of this section. The Articles of War and Articles for the Government of the Navy are sufficiently complete in themselves to authorize the adequate punishment of military or naval personnel for violations of general criminal statutes as well as for disobedience of orders. See Articles of War, Article 96, section 1568 of title 10, U.S.C., 1940 ed., Army, and Articles for the Government of the Navy, Articles 1, 4, 22, 23, section 1200, of title 34, U.S.C., 1940 ed., Navy.

The revised section, in this respect, places violations on the same basis as other misdemeanors in violation of the general statutes of the United States and authorizes punishment of persons subject to military or naval law under such law, or in case the military or naval authorities turn the violator over to the civil authorities, the trial and punishment may be under the general law.

The phrase "and/or" appearing twice in section 581a of title 18, U.S.C., 1940 ed., was deleted to avoid uncertainty and ambiguity.

Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in section 1 of this title.

Changes were made in phraseology.

1949 ACT

This section [section 35] makes the following changes in section 1384 of title 18, U.S.C.:

1. In the first paragraph, substitutes "Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and any two or all of them" for "Secretary of the Army or the Secretary of the Navy, or both", and substitutes "Army, the Navy, or the Air Force," for "Army or the Navy, or both,", in view of the establishment in 1947 of the Department of the Air Force, headed by a Secretary.

2. In the second paragraph, substitutes "The Secretaries of the Army, Navy, and Air Force" for "The Secretaries of the Army, and Navy", for the same reason given in item 1 above.

3. In the third paragraph, substitutes "Department of the Army, Navy, or Air Force" for "War or Navy Department" for the same reason given in item 1 above.

AMENDMENTS

1949—Act May 24, 1949, made section applicable to the Air Force which was established as a separate department in 1947, headed by a Secretary.

TRANSFERS OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953.

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(Added Aug. 10, 1956, ch. 1041, § 18(a), 70A Stat. 626, and amended June 25, 1959, Pub. L. 86-70, § 17(d), 73 Stat. 144.)

HISTORICAL AND REVISION NOTE

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1385	10:15	June 18, 1878, ch. 263, § 15, 20 Stat. 152; Mar. 3, 1899, ch. 429, § 363 (proviso); added June 6, 1900, ch. 786, § 29 (less last proviso), 31 Stat. 330.

This section is revised to conform to the style and terminology used in title 18. It is not enacted as a part of title 10, United States Code, since it is more properly allocated to title 18.

AMENDMENTS

1959—Pub. L. 86-70 eliminated provisions which made section inapplicable in Alaska.

[§§ 1401 to 1407. Repealed. Pub. L. 91-513, title III, § 1101(b)(1)(A), Oct. 27, 1970, 84 Stat. 1292]

Section 1401, acts July 18, 1956, ch. 629, title II, § 201, 70 Stat. 572; July 12, 1960, Pub. L. 86-624, § 13(a), 74 Stat. 413, defined the terms "heroin" and "United States".

Section 1402, act July 18, 1956, ch. 629, title II, § 201, 70 Stat. 572, provided for the surrender to the Secretary of the Treasury of all legally possessed heroin within 120 days of July 19, 1956.

Section 1403, act July 18, 1956, ch. 629, title II, § 201, 70 Stat. 573, set penalties for the unlawful use of communications facilities in the commission of offenses involving the importation or exportation of narcotics.

Section 1404, act July 18, 1956, ch. 629, title II, § 201, 70 Stat. 573, granted the United States the right to appeal from the grant of a motion to suppress in prosecutions involving the unlawful exportation or importation of narcotics.

Section 1405, acts July 18, 1956, ch. 629, title III, § 201, 70 Stat. 573; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(1), 82 Stat. 1115, set out the procedure for the issuance of search warrants.

Section 1406, act July 18, 1956, ch. 629, title II, § 201, 70 Stat. 574, provided for the authority to grant immunity from prosecution of any witnesses compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title. Section was repealed earlier by Pub. L. 91-452, title II, § 224(a), Oct. 15, 1970, 84 Stat. 929, with such repeal to be effective on the sixtieth day following Oct. 15, 1970, but with such repeal not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970.

Section 1407, act July 18, 1956, ch. 629, title II, § 201, 70 Stat. 574, prohibited border crossings by any person addicted to or using drugs or any person convicted of any violation of narcotic or marihuana laws of the United States or of any State, the penalty for which is imprisonment for more than one year.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISIONS

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a Savings Provision note under section 171 of Title 21, Food and Drugs.

CHAPTER 69—NATIONALITY AND CITIZENSHIP

Sec.
1421. Accounts of court officers.
1422. Fees in naturalization proceedings.
1423. Misuse of evidence of citizenship or naturalization.
1424. Personation or misuse of papers in naturalization proceedings.
1425. Procurement of citizenship or naturalization unlawfully.
1426. Reproduction of naturalization or citizenship papers.
1427. Sale of naturalization or citizenship papers.
1428. Surrender of canceled naturalization certificate.
1429. Penalties for neglect or refusal to answer subpena.

CROSS REFERENCES

Passports and visas, offenses, see section 1541 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3291 of this title.

§ 1421. Accounts of court officers

Whoever, being a clerk or assistant clerk of a court, or other person charged by law with a duty to render true accounts of moneys received in any proceeding relating to citizenship, naturalization, or registration of aliens or to pay over any balance of such moneys due to the United States, willfully neglects to do so within thirty days after said payment shall become due and demand therefor has been made, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(34), (d) and (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(34), (d), (*l*), 54 Stat. 1167, 1168).

Minor changes in phraseology only were made.

§ 1422. Fees in naturalization proceedings

Whoever knowingly demands, charges, solicits, collects, or receives, or agrees to charge, solicit, collect, or receive any other or additional fees or moneys in proceedings relating to naturalization or citizenship or the registry of aliens beyond the fees and moneys authorized by law, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(33), (d), (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(33), (d), (*l*), 54 Stat. 1167, 1168).

Minor changes in phraseology were made.

§ 1423. Misuse of evidence of citizenship or naturalization

Whoever knowingly uses for any purpose any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, unlawfully issued or made, or copies or duplicates thereof, showing any person to be naturalized or admitted to be a

citizen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(14), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(14), (b), (d), 54 Stat. 1165, 1167).

Section consolidates subsections (a) paragraph (14), (b), (d), and the general punishment provision of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

The reference "for the purpose of voting" was omitted as surplusage being embraced in the all-inclusive phrase "for any purpose."

Changes in phraseology were made.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1424. Personation or misuse of papers in naturalization proceedings

Whoever, whether as applicant, declarant, petitioner, witness or otherwise, in any naturalization or citizenship proceeding, knowingly personates another or appears falsely in the name of a deceased person or in an assumed or fictitious name; or

Whoever knowingly and unlawfully uses or attempts to use, as showing naturalization or citizenship of any person, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, or copies or duplicates thereof, issued to another person, or in a fictitious name or in the name of a deceased person—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766.)

HISTORICAL AND REVISION NOTES

Based on subsection (a) pars. (6)(a), (b), (15), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (6), (15), (b), (d), 54 Stat. 1164, 1165, 1167).

Section consolidates, with minor verbal changes, subsections (a), pars. (6)(a), (b), (15), (b), (d), and the general punishment provision of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1425. Procurement of citizenship or naturalization unlawfully

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) pars. (2)–(5), (7), (b), and (d) of section 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (2)–(5), (7), (b), (d), 54 Stat. 1163, 1164, 1167).

Section consolidates five similar paragraphs, and the punishment provisions of subsection (d) of said section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality, with minor necessary changes in translations and phraseology. Numerous references to aiding and assisting were omitted as unnecessary as such persons are principals under definitive section 2 of this title.

Words "a certificate of arrival or" were inserted before "any certificate" in subsection (b), so as to remove any doubt as to scope of section.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title; title 8 section 1451.

§ 1426. Reproduction of naturalization or citizenship papers

(a) Whoever falsely makes, forges, alters, or counterfeits any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate or documentary evidence of naturalization or citizenship or any order, record, signature, paper or proceeding or any copy thereof, required or authorized by any law relating to naturalization or citizenship or registry of aliens; or

(b) Whoever utters, sells, disposes of or uses as true or genuine, any false, forged, altered, antedated or counterfeited oath, notice, affidavit, certificate of arrival, declaration of intention to become a citizen, certificate or documentary evidence of naturalization or citizenship, or any order, record, signature or other instrument, paper or proceeding required or authorized by any law relating to naturalization or citizenship or registry of aliens, or any copy thereof, knowing the same to be false, forged, altered, antedated or counterfeited; or

(c) Whoever, with intent unlawfully to use the same, possesses any false, forged, altered, antedated or counterfeited certificate of arrival, declaration of intention to become a citizen, certificate or documentary evidence of naturalization or citizenship purporting to have been issued under any law of the United States, or copy thereof, knowing the same to be false, forged, altered, antedated or counterfeited; or

(d) Whoever, without lawful authority, engraves or possesses, sells or brings into the United States any plate in the likeness or similitude of any plate designed, for the printing of a declaration of intention, or certificate or documentary evidence of naturalization or citizenship; or

(e) Whoever, without lawful authority, brings into the United States any document printed therefrom; or

(f) Whoever, without lawful authority, possesses any blank certificate of arrival, blank

declaration of intention or blank certificate of naturalization or citizenship provided by the Immigration and Naturalization Service, with intent unlawfully to use the same; or

(g) Whoever, with intent unlawfully to use the same, possesses a distinctive paper adopted by the proper officer or agency of the United States for the printing or engraving of a declaration of intention to become a citizen, or certificate of naturalization or certificate of citizenship; or

(h) Whoever, without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 767.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) pars. (8)–(12), (16), (17), (20)–(29), (b), (d), (*l*) of section 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a) pars. (8)–(12), (16), (17), (20)–(29), (b), (d), (*l*), 54 Stat. 1164–1168).

Sections consolidates numerous similar paragraphs with necessary changes in phraseology and translations.

References to persons causing, procuring, aiding, abetting, or assisting were omitted as unnecessary, such persons being principals under definitive section 2 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1427. Sale of naturalization or citizenship papers

Whoever unlawfully sells or disposes of a declaration of intention to become a citizen, certificate of naturalization, certificate of citizenship or copies or duplicates or other documentary evidence of naturalization or citizenship, shall be fined not more than $5,000 or imprisoned not more than five years or both.

(June 25, 1948, ch. 645, 62 Stat. 767.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) par. (13), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(13), (d), 54 Stat. 1165, 1167).

Minor changes were made in phraseology.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1428. Surrender of canceled naturalization certificate

Whoever, having in his possession or control a certificate of naturalization or citizenship or a copy thereof which has been canceled as provided by law, fails to surrender the same after at least sixty days' notice by the appropriate court or the Commissioner or Deputy Commissioner of Immigration, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 767.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) par. (31), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a) par. (31), (b), (d), 54 Stat. 1167).

Subsection (b) of said section 746 of title 8 is the authority for inserting "or a copy thereof" after "citizenship."

Changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested, in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2, of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1429. Penalties for neglect or refusal to answer subpena

Any person who has been subpenaed under the provisions of subsection (e) of section 336 of the Immigration and Nationality Act to appear at the final hearing of a petition for naturalization, and who shall neglect or refuse to so appear and to testify, if in the power of such person to do so, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(Added June 27, 1952, ch. 477, title IV, § 402(b), 66 Stat. 276.)

REFERENCES IN TEXT

Subsection (e) of section 336 of the Immigration and Nationality Act, referred to in text, is classified to section 1447(e) of Title 8, Aliens and Nationality.

CHAPTER 71—OBSCENITY

Sec.
1461. Mailing obscene or crime-inciting matter.
1462. Importation or transportation of obscene matters.
1463. Mailing indecent matter on wrappers or envelopes.
1464. Broadcasting obscene language.

Sec.
1465. Transportation of obscene matters for sale or distribution.

AMENDMENTS

1955—Act June 28, 1955, ch. 190, § 4, 69 Stat. 184, added item 1465.

1950—Act May 27, 1950, ch. 214, § 2, 64 Stat. 194, substituted "matters" for "literature" in item 1462.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 3001.

§ 1461. Mailing obscene or crime-inciting matter

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

(June 25, 1948, ch. 645, 62 Stat. 768; June 28, 1955, ch. 190, §§ 1, 2, 69 Stat. 183; Aug. 28, 1958, Pub. L. 85-796, § 1, 72 Stat. 962; Jan. 8, 1971, Pub. L. 91-662, §§ 3, 5(b), 6(3), 84 Stat. 1973, 1974.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 334 (Mar. 4, 1909, ch. 321, § 211, 35 Stat. 1429; Mar. 4, 1911, ch. 241, § 2, 36 Stat. 1339).

The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.

In *Youngs Rubber Corporation, Inc.* v. *C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States* v. *Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis* v. *United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation* v. *C. I. Lee & Co.*, *supra*, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States* v. *One Package*, C.C.A. 1936, 86 F. 2d 737.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1971—Pub. L. 91-662, § 3(1), in second par. struck out "preventing conception or" preceding "producing abortion".

Pub. L. 91-662, § 3(1), in third par. struck out "preventing conception or" following "apply it for".

Pub. L. 91-662, § 3(2), (3), in fourth par. substituted "means abortion may be produced" for "means conception may be prevented or abortion produced".

Pub. L. 91-662, § 3(1), in fifth par. struck out "preventing conception or" following "applied for".

Pub. L. 91-662, § 6(3), in eighth par. added "or section 3001(e) of title 39" following "this section". Section 5(b) of Pub. L. 91-662 inserted reference to section 4001(d) of Title 39, The Postal Service, which reflected provisions of Title 39 prior to the effective date of Title 39, Postal Service, as enacted by the Postal Reorganization Act. Said section 4001(d) was repealed by section 6(2) of Pub. L. 91-662, effective on the date that the Board of Governors of the Postal Service establish as the effective date for section 3001 of Title 39, Postal Service.

1958—Pub. L. 85-796 provided in the eighth par. for continuing offenses by use of the mails instead of by deposits for mailing and for punishment for subsequent offenses.

1955—Act June 28, 1955, § 1, substituted in first paragraph "indecent, filthy or vile article, matter, thing, device or substance" for "or filthy book, pamphlet, picture paper, letter, writing, print, or other publication of an indecent character".

Act June 28, 1955, § 2, eliminated the fifth paragraph which read as follows: "Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device or substance; and".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by sections 3 and 5(b) of Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as an Effective Date of 1971 Amendment note under section 552 of this title.

Section 6 of Pub. L. 91-662 provided in part that the amendment by section 6(3) of Pub. L. 91-662 shall be effective on the date that the Board of Governors of the United States Postal Service establishes as the effective date for section 3001 of title 39 of the United States Code, as enacted by the Postal Reorganization Act.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

Pub. L. 90-100, Oct. 3, 1967, 81 Stat. 253, as amended by Pub. L. 90-350, title V, § 502, June 19, 1968, 82 Stat. 197; Pub. L. 91-74, title V, § 503, Sept. 29, 1969, 83 Stat. 123, provided for the establishment of the Commission on Obscenity and Pornography, its membership, compensation of the members, powers, functions, and duties of the Commission, required the Commission to report to the President and to the Congress its findings and recommendations no later than Sept. 30, 1970, and provided for its termination ten days following the submission of the report.

CROSS REFERENCES

Importation of immoral articles prohibited, see section 1305 of Title 19, Customs Duties.

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

Wire or oral communications, authorization for interception, to provide evidence of murder, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 sections 3001, 3011.

§ 1462. Importation or transportation of obscene matters

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

(June 25, 1948, ch. 645, 62 Stat. 768; May 27, 1950, ch. 214, § 1, 64 Stat. 194; Aug. 28, 1958, Pub. L. 85-796, § 2, 72 Stat. 962; Jan. 8, 1971, Pub. L. 91-662, § 4, 84 Stat. 1973.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 396 (Mar. 4, 1909, ch. 321, § 245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for ten lines of text without loss of meaning. (See definitive section 10 of this title.)

(See reviser's note under section 1461 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1971—Pub. L. 91-662 struck out "preventing conception, or" preceding "producing abortion".

1958—Pub. L. 85-796 substituted in opening par. "uses" for "deposits with", "carriage of which" for "depositing of which for carriage", in penultimate par., and inserted in last par. penalty provisions for subsequent offenses.

1950—Act May 27, 1950, brought within scope of section the importation or transportation of any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or think capable of producing sound.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as an Effective Date of 1971 Amendment note under section 552 of this title.

CROSS REFERENCES

Importation of immoral articles prohibited, see section 1305 of Title 19, Customs Duties.

§ 1463. Mailing indecent matter on wrappers or envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(13), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 335 (Mar. 4, 1909, ch. 321, § 212, 35 Stat. 1129).

Said section 335 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 1718 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 sections 3001, 3011.

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769.)

HISTORICAL AND REVISION NOTES

Based on sections 326 and 501 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radio-telegraphs (June 19, 1934, ch. 652, §§ 326, 501, 48 Stat. 1091, 1100).

Section consolidates last sentence of section 326 with penalty provision of section 501 both of title 47, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Section 501 of title 47, U.S.C., 1940 ed., is to remain, also, in said title 47, as it relates to other sections therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 sections 312, 503.

§ 1465. Transportation of obscene matters for sale or distribution

Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.

(Added June 28, 1955, ch. 190, § 3, 69 Stat. 183.)

REFERENCES IN TEXT

"This Act," referred to in text, means act June 28, 1955, ch. 190, 69 Stat. 183, which amended section 1461 of this title and added this section.

CHAPTER 73—OBSTRUCTION OF JUSTICE

Sec.
1501. Assault on process server.
1502. Resistance to extradition agent.
1503. Influencing or injuring officer, juror or witness generally.
1504. Influencing juror by writing.
1505. Obstruction of proceedings before departments, agencies, and committees.
1506. Theft or alteration of record or process; false bail.
1507. Picketing or parading.
1508. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting.
1509. Obstruction of court orders.
1510. Obstruction of criminal investigations.
1511. Obstruction of State or local law enforcement.

AMENDMENTS

1970—Pub. L. 91-452, title VIII, § 802(b), Oct. 15, 1970, 84 Stat. 937, added item 1511.

1967—Pub. L. 90-123, § 1(b), Nov. 3, 1967, 81 Stat. 362, added item 1510.

1962—Pub. L. 87-664, § 6(b), Sept. 19, 1962, 76 Stat. 552, substituted "Obstruction of proceedings before departments, agencies, and committees" for "Influencing or injuring witness before agencies and committees" in item 1505.

1960—Pub. L. 86-449, title I, § 102, May 6, 1960, 74 Stat. 86, added item 1509.

1956—Act Aug. 2, 1956, ch. 879, § 2, 70 Stat. 936, added item 1508.

1950—Act Sept. 22, 1950, ch. 1024, title I, § 31(b), 64 Stat. 1019, added item 1507.

CROSS REFERENCES

Conspiracy to obstruct justice, see section 1985 of Title 42, The Public Health and Welfare.

Obstructing administration of justice as criminal contempt, see section 401 of this title.

Peonage, obstructing enforcement of law prohibiting, see section 1581 of this title.

§ 1501. Assault on process server

Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States magistrate; or

Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

Shall, except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(1), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 245 (Mar. 4, 1909, ch. 321, § 140, 35 Stat. 1114).

The phrase "Except as otherwise expressly provided by law" was inserted because sections 2231, 2232, and 2233 of this title provide greater penalties for obstructing service of search warrants.

Mandatory provisions were rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrate" for "United States commissioner".

CROSS REFERENCES

Assaulting Federal officer, see section 111 of this title.

Killing Federal officer, see section 1114 of this title.

Obstructing searches or seizures, see sections 2231 and 2232 of this title.

§ 1502. Resistance to extradition agent

Whoever knowingly and willfully obstructs, resists, or opposes an extradition agent of the United States in the execution of his duties, shall be fined not more than $300 or imprisoned not more than one year, or both.

(June 24, 1948, ch. 645, 62 Stat. 769.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 661 (R.S. 5277).

Said section 661 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 752 of this title.

Words "an extradition agent of the United States" were substituted for "such agent" which was referred to in sections 3182 et seq. of this title.

A fine of "$300" was substituted for "$1,000" as the mandatory maximum to harmonize with similar offenses in this chapter. (See section 1501 of this title.)

Punishment provision was rephrased in the alternative.

CROSS REFERENCES

Extradition of fugitives, see section 3181 et seq. of this title.

§ 1503. Influencing or injuring officer, juror or witness generally

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States magistrate or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, magistrate, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(1), (3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 241 (Mar. 4, 1909, ch. 321, § 135, 35 Stat. 1113; June 8, 1945, ch. 178, § 1, 59 Stat. 234).

The phrase "other committing magistrate" was substituted for "officer acting as such commissioner" in order to clarify meaning.

Minor changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrate" and "magistrate" for "United States commissioner" and "commissioner", in two instances, respectively.

CROSS REFERENCES

Bribery of officers, jurors, or witnesses, see section 201 et seq. of this title.

Influencing juror or witness as criminal contempt, see section 401 of this title.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 1961, 2516 of this title; title 29 section 1111.

§ 1504. Influencing juror by writing

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than $1,000 or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

(June 25, 1948, ch. 645, 62 Stat. 770.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 243 (Mar. 4, 1909, ch. 321, § 137, 35 Stat. 1113).

Last paragraph was added to remove the possibility that a proper request to appear before a grand jury might be construed as a technical violation of this section.

Minor changes were made in phraseology.

CROSS REFERENCES

Bribery of public officials and witnesses, see section 201 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 3401 of this title.

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770; Sept. 19, 1962, Pub. L. 87-664, § 6(a), 76 Stat. 551; Oct. 15, 1970, Pub. L. 91-452, title IX, § 903, 84 Stat. 947; Sept. 30, 1976, Pub. L. 94-435, title I, § 105, 90 Stat. 1389.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 241a, (Mar. 4, 1909, ch. 321, § 135a, as added Jan. 13, 1940, ch. 1, 54 Stat. 13; June 8, 1945, ch. 178, § 2, 59 Stat. 234).

Word "agency" was substituted for the words "independent establishment, board, commission" in two instances to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

REFERENCES IN TEXT

The Antitrust Civil Process Act, referred to in text, is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables volume.

AMENDMENTS

1976—Pub. L. 94-435 struck out reference to "section 1968 of this title" following "Antitrust Civil Process Act", inserted "withholds, misrepresents" following "willfully", "covers up" following "conceals", "answers to written interrogatories, or oral testimony", following "any documentary material", and "or attempts to do so or solicits another to do so;" following "such demand".

1970—Pub. L. 91-452 added reference to section 1968 of this title.

1962—Pub. L. 87-664 substituted the catchline "Obstruction of proceedings before departments, agencies, and committees" for "Influencing or injuring witness before agencies and committees" and punished the willful removal, concealment, destruction, mutilation, alteration or falsification of documents which were the subject of a demand under the Antitrust Civil Process Act if done with the intent to prevent compliance with a civil investigative demand.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 as effective on Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as an Effective Date of 1976 Amendment note under section 1311 of Title 15, Commerce and Trade.

CROSS REFERENCES

Bribery of public officials or witnesses, see section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 201 of this title; title 12 section 1457; title 29 section 1111.

§ 1506. Theft or alteration of record or process; false bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 233 (Mar. 4, 1909, ch. 321, § 127, 35 Stat. 1111).

The term of imprisonment was reduced from 7 to 5 years, to conform the punishment with like ones for similar offenses. (See section 1503 of this title.)

Minor changes were made in phraseology.

CROSS REFERENCES

Concealment, removal or destruction of records, see section 2071 of this title.

Embezzlement or theft of records, generally, see section 641 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1111.

§ 1507. Picketing or parading

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States,

or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than $5,000 or imprisoned nor more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

(Added Sept. 23, 1950, ch. 1024, title I, § 31(a), 64 Stat. 1018.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 sections 782, 795.

§ 1508. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting

Whoever knowingly and willfully, by any means or device whatsoever—

(a) records, or attempts to record, the proceedings of any grand or petit jury in any court of the United States while such jury is deliberating or voting; or

(b) listens to or observes, or attempts to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the United States while such jury is deliberating or voting—

shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Nothing in paragraph (a) of this section shall be construed to prohibit the taking of notes by a grand or petit juror in any court of the United States in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.

(Added Aug. 2, 1956, ch. 879, § 1, 70 Stat. 935.)

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3401 of this title.

§ 1509. Obstruction of court orders

Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime.

(Added Pub. L. 86-449, title I, § 101, May 6, 1960, 74 Stat. 86.)

CROSS REFERENCES

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3401 of this title.

§ 1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator; or

Whoever injures any person in his person or property on account of the giving by such person or by any other person of any such information to any criminal investigator—

Shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) As used in this section, the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.

(Added Pub. L. 90-123, § 1(a), Nov. 3, 1967, 81 Stat. 362.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title; title 29 section 1111.

§ 1511. Obstruction of State or local law enforcement

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Com-

monwealth of Puerto Rico, and any territory or possession of the United States.

(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

(d) Whoever violates this section shall be punished by a fine of not more than $20,000 or imprisonment for not more than five years, or both.

(Added Pub. L. 91-452, title VIII, § 802(a), Oct. 15, 1970, 84 Stat. 936.)

REFERENCES IN TEXT

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, referred to in subsec. (c), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 801 of Pub. L. 91-452 provided that: "The Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof."

PRIORITY OF STATE LAWS

Section 811 of Pub. L. 91-452 provided that: "No provision of this title [enacting this section and section 1955 of this title, amending section 2516 of this title and enacting provisions set out as notes under this section and section 1955 of this title] indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a state or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

CHAPTER 75—PASSPORTS AND VISAS

Sec.
1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
1546. Fraud and misuse of visas, permits, and other entry documents.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3291 of this title.

§ 1541. Issuance without authority

Whoever, acting or claiming to act in any office or capacity under the United States, or a State or possession, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person whomsoever; or

Whoever, being a consular officer authorized to grant, issue, or verify passports, knowingly and willfully grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not—

Shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 771.)

HISTORICAL AND REVISION NOTES

Based on section 219 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. 4078; June 14, 1902, ch. 1088, § 3, 32 Stat. 386).

The venue provision, which followed the punishment provisions, was omitted as covered by section 3238 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3291 of this title.

§ 1542. False statement in application and use of passport

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771.)

HISTORICAL AND REVISION NOTES

Based on section 220 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 2, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Mandatory-punishment provision was rephrased in the alternative.

Punishment of five years' imprisonment was substituted for "ten years" to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

False statements, generally, see section 1001 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717, 3291 of this title.

§ 1543. Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument

purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771.)

HISTORICAL AND REVISION NOTES

Based on section 222 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 4, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory-punishment provision with authorization for added fine in discretion of court was rephrased in the alternative.

Punishment of five years' imprisonment was substituted for "ten years" to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717, 3291 of this title.

§ 1544. Misuse of passport

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771.)

HISTORICAL AND REVISION NOTES

Based on section 221 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 3, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Mandatory-punishment provision rephrased in the alternative.

Punishment of five years' imprisonment was substituted for "ten years" to conform with other sections embracing offenses of comparable gravity.

The phrase "which said rules shall be printed on the passport" was omitted as inconsistent with administrative practice and because the existing rules are too voluminous to be printed on a passport.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Limitations, period of, see section 3291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717, 3291 of this title.

§ 1545. Safe conduct violation

Whoever violates any safe conduct or passport duly obtained and issued under authority of the United States shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771.)

HISTORICAL AND REVISION NOTES

Based on section 251 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. 4062).

The punishment provision was rewritten to permit the alternative of a fine of not more than $2,000 or imprisonment, or both, instead of imprisonment and fine "at the discretion of the court", to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

§ 1546. Fraud and misuse of visas, permits, and other entry documents

Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise dis-

poses of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771; June 27, 1952, ch. 477, title IV, § 402(a), 66 Stat. 275; Oct. 18, 1976, Pub. L. 94-550, § 5, 90 Stat. 2535.)

HISTORICAL AND REVISION NOTES

Based on section 220 of title 8, U.S.C., 1940 ed., Aliens and Nationality (May 26, 1924, ch. 190, § 22, 43 Stat. 165).

Words "upon conviction thereof" were omitted as surplusage since punishment can be imposed only after a conviction.

Fine of $10,000 was reduced to $2,000 to conform with sections embracing offences of comparable gravity.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The immigration laws, referred to in text, are classified generally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. See also section 1101(a)(17) of Title 8.

AMENDMENTS

1976—Pub. L. 94-550 inserted ", or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true," following "Whoever knowingly makes under oath" in the fourth paragraph.

1952—Act June 27, 1952, made section applicable to entry documents other than visas and permits.

TRANSFER OF FUNCTIONS

All functions vested by law in the Attorney General, the Department of Justice, or any other officer or any agency of that Department, with respect to the inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving the United States, were transferred to the Secretary of the Treasury by Reorg. Plan No. 2 of 1973, § 2, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Immigration visas and permits, see section 1201 et seq. of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 8 section 1251.

CHAPTER 77—PEONAGE AND SLAVERY

Sec.
1581. Peonage; obstructing enforcement.
1582. Vessels for slave trade.
1583. Enticement into slavery.
1584. Sale into involuntary servitude.
1585. Seizure, detention, transportation or sale of slaves.
1586. Service on vessels in slave trade.
1587. Possession of slaves aboard vessel.
1588. Transportation of slaves from United States.

HISTORICAL AND REVISION NOTES

It was felt that further revision of this chapter should be considered at an opportune time for the same reasons stated with respect to chapter 81, "Piracy and Privateering".

AMENDMENTS

1949—Act May 24, 1949, ch. 139, § 36, 63 Stat. 95, substituted a semicolon for comma following "Peonage" in item 1581.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of kidnaping, see section 2516 of this title.

§ 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

(June 25, 1948, ch. 645, 62 Stat. 772.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 444, 445 (Mar. 4, 1909, ch. 321, §§ 269, 270, 35 Stat. 1142).

Section consolidates sections 444 and 445 of said title 18, U.S.C., 1940 ed., with changes in phraseology to amplify and clarify their provisions.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

CROSS REFERENCES

Peonage abolished in States and Territories, see section 1994 of Title 42, The Public Health and Welfare.

Slavery abolished, see Const. Amend. 13.

§ 1582. Vessels for slave trade

Whoever, whether as master, factor, or owner, builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, in any port or place within the United States, or causes such vessel to sail from any such port or place, for the purpose of procuring any person from any foreign kingdom or country to be transported and held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than $5,000 or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 772.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 424 (Mar. 4, 1909, ch. 321, § 249, 35 Stat. 1139).

Words "within the United States" were substituted for "within the jurisdiction of the United States". See section 5 of this title defining "United States".

Provision for division of the fine and its recovery by private person was omitted. (See reviser's note under section 1585 of this title.)

Mandatory-punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

CROSS REFERENCES

Limitation on prosecution of slave trade violations, see section 3283 of this title.

Slavery abolished, see Const. Amend. 13.

§ 1583. Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 772.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 443 (Mar. 4, 1909, ch. 321, § 268, 35 Stat. 1141).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in paragraphing of section.

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

Wire or oral communications, authorization for interception, to provide evidence of kidnapping, see section 2516 of this title.

§ 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 423, 446 (Mar. 4, 1909, ch. 321, §§ 248, 271, 35 Stat. 1139, 1142).

Sections consolidated with changes of phraseology necessary to effect consolidation.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Provisions as to holding of kidnapped persons were omitted as superseded by section 1201 of this title and original text relating to sale or holding to involuntary servitude retained.

Words "within the United States" were substituted for "within the jurisdiction of the United States". (See section 5 of this title defining "United States".)

The punishment provisions were derived from section 446 of title 18, U.S.C., 1940 ed., as more consistent with other sections of this chapter.

The requirement of section 423 of title 18, U.S.C., 1940 ed., for payment of one-half the fine "for the use of the person prosecuting the indictment to effect" was omitted as meaningless. (See also reviser's note under section 1585 of this title.)

Mandatory-punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1585. Seizure, detention, transportation or sale of slaves

Whoever, being a citizen or resident of the United States and a member of the crew or ship's company of any foreign vessel engaged in the slave trade, or whoever, being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore seizes any person with intent to make that person a slave, or decoys, or forcibly brings, carries, receives, confines, detains or transports any person as a slave on board such vessel, or, on board such vessel, offers or attempts to sell any such person as a slave, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from such vessel any person with intent to sell, or having previously sold, such person as a slave, shall be fined not more than $5,000 or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 421, 422, 425 (Mar. 4, 1909, ch. 321, §§ 246, 247, 250, 35 Stat. 1138, 1139).

Section consolidates and restores three basic sections (act May 25, 1820, ch. 113, §§ 4, 5, 3 Stat. 600, 601; act Apr. 20, 1818, ch. 91, § 4, 3 Stat. 451). As reenacted in the Revised Statutes, such sections were extended and broadened beyond such basic acts. The language at the beginning, "being a citizen or resident of the United States", was inserted from said section 425 of title 18, U.S.C., 1940 ed., as enacted originally. While the basic provisions of said sections 421 and 422 are thus broadened, their application as enacted in the 1909 Criminal Code is narrowed.

Designation in said section 421 of title 18, U.S.C., 1940 ed., of offender as a "pirate" was omitted as unnecessary. The punishment provision of section 1582 of this title (incorporated by reference in said section 425) has been adopted as consistent with other slave-trade statutes rather than the life-imprisonment penalty contained in said sections 421 and 422 of title 18, U.S.C., 1940 ed. However, the requirement in section 1582 of this title that one-half the fine be for the "use of the person prosecuting the indictment to effect" was omitted as meaningless.

Mandatory-punishment provisions were rephrased in the alternative.

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

§ 1586. Service on vessels in slave trade

Whoever, being a citizen or resident of the United States, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined not more

than $2,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §427 (Mar. 4, 1909, ch. 321, § 252, 35 Stat. 1139).

Mandatory-punishment provisions were rephrased in the alternative.

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

§ 1587. Possession of slaves aboard vessel

Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering off the coast thereof, and having on board any person for the purpose of selling such person as a slave, or with intent to land such person for such purpose, shall be fined not more than $10,000 or imprisoned not more than four years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §426 (Mar. 4, 1909, ch. 321, § 251, 35 Stat. 1139).

Mandatory-punishment provisions were rephrased in the alternative.

Minor change was made in phraseology.

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

§ 1588. Transportation of slaves from United States

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §428 (Mar. 4, 1909, ch. 321, § 253, 35 Stat. 1139).

Words "subject to the jurisdiction of" which appeared twice in this section were omitted and "within" substituted, in view of section 5 of this title defining "United States".

CROSS REFERENCES

Slavery abolished, see Const. Amend. 13.

CHAPTER 79—PERJURY

Sec.
1621. Perjury generally.
1622. Subornation of perjury.
1623. False declarations before grand jury or court.

AMENDMENTS

1970—Pub. L. 91-452, title IV, § 401(b), Oct. 15, 1970, 84 Stat. 933, added item 1623.

§ 1621. Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(June 25, 1948, ch. 645, 62 Stat. 773; Oct. 3, 1964, Pub. L. 88-619, § 1, 78 Stat. 995; Oct. 18, 1976, Pub. L. 94-550, § 2, 90 Stat. 2534.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 231, 629 (Mar. 4, 1909, ch. 321, § 125, 35 Stat. 1111; June 15, 1917, ch. 30, title XI, § 19, 40 Stat. 230).

Words "except as otherwise expressly provided by law" were inserted to avoid conflict with perjury provisions in other titles where the punishment and application vary.

More than 25 additional provisions are in the code. For construction and application of several such sections, see *Behrle* v. *United States* (App. D.C. 1938, 100 F. 2d 714), *United States* v. *Hammer* (D.C.N.Y., 1924, 299 F. 1011, affirmed, 6 F. 2d 786), *Rosenthal* v. *United States* (1918, 248 F. 684, 160 C.C.A. 584), cf. *Epstein* v. *United States* (1912, 196 F. 354, 116 C.C.A. 174, certiorari denied 32 S. Ct. 527, 223 U.S. 731, 56 L. ed. 634).

Mandatory punishment provisions were rephrased in the alternative.

Minor verbal changes were made.

AMENDMENTS

1976—Pub. L. 94-550 divided existing provisions into a single introductory word "Whoever", par. (1), and closing provisions following par. (2), and added par. (2).

1964—Pub. L. 88-619 inserted "This section is applicable whether the statement or subscription is made within or without the United States."

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Census employees; false statements as perjury; punishment, see section 213 of Title 13, Census.

False tax return, statements or document as perjury, see section 7206 of Title 26, Internal Revenue Code.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section committed in connection with certain national security offenses, see section 8312 of Title 5, Government Organization and Employees.

Government employees; disability compensation; false statements as perjury; punishment, see section 1920 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Willful and false swearing on examination before judge of United States Customs Court as perjury, see section 1510 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 8 section 1357; title 30 section 49e.

§ 1622. Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 232 (Mar. 4, 1909, ch. 321, § 126, 35 Stat. 1111).

The punishment prescribed in section 1621 of this title was substituted for the reference thereto.

Minor change was made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described under this section committed in connection with certain national security offenses, see section 8312 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 30 section 49e.

§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before an ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before an ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment of information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

(Added Pub. L. 91-452, title IV, § 401(a), Oct. 15, 1970, 84 Stat. 932, and amended Pub. L. 94-550, § 6, Oct. 18, 1976, 90 Stat. 2535.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-550 inserted "(or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code)" following "under oath".

CHAPTER 81—PIRACY AND PRIVATEERING

Sec.
1651. Piracy under law of nations.
1652. Citizens as pirates.
1653. Aliens as pirates.
1654. Arming or serving on privateers.
1655. Assault on commander as piracy.
1656. Conversion or surrender of vessel.
1657. Corruption of seamen and confederating with pirates.
1658. Plunder of distressed vessel.
1659. Attack to plunder vessel.
1660. Receipt of pirate property.
1661. Robbery ashore.

HISTORICAL AND REVISION NOTES

In the light of far-reaching developments in the field of international law and foreign relations, the law of piracy is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion. Such a task may be regarded as beyond the scope of this project. The present revision is, therefore, confined to the making of some obvious and patent corrections. It is recommended, however, that at some opportune time in the near future, the subject of piracy be entirely reconsidered and the law bearing on it modified and restated in accordance with the needs of the times.

§ 1651. Piracy under law of nations

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 481 (Mar. 4, 1909, ch. 321, § 290, 35 Stat. 1145).

CROSS REFERENCES

High seas included within special maritime and territorial jurisdiction of United States, see section 7 of this title.

Regulations for the suppression of piracy, see sections 381 to 387 of Title 33, Navigation and Navigable Waters.

Venue of offenses committed on high seas, see section 3238 of this title.

§ 1652. Citizens as pirates

Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774).

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 495 (Mar. 4, 1909, ch. 321, § 304, 35 Stat. 1147).

Words "Notwithstanding the pretense of such authority," were omitted as surplusage.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of murder or robbery, see section 2516 of this title.

§ 1653. Aliens as pirates

Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 496 (Mar. 4, 1909, ch. 321, § 305, 35 Stat. 1147.)

Minor change was made in phraseology.

§ 1654. Arming or serving on privateers

Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm or is concerned in furnishing, fitting out, or arming any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property; or

Whoever takes the command of or enters on board of any such vessel with such intent; or

Whoever purchases any interest in any such vessel with a view to share in the profits thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 494 (Mar. 4, 1909, ch. 321, § 303, 35 Stat. 1147).

Reference to persons procuring or aiding was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment provisions were rephrased in the alternative.

The last sentence relating to venue was omitted as unnecessary in view of the general provision to the same effect in section 3238 of this title.

Minor changes were made in phraseology and arrangement.

§ 1655. Assault on commander as piracy

Whoever, being a seaman, lays violent hands upon his commander, to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 485 (Mar. 4, 1909, ch. 321, § 294, 35 Stat. 1146).

A minor verbal change was made.

§ 1656. Conversion or surrender of vessel

Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of $50 or over; or

Whoever yields up such vessel voluntarily to any pirate—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 497 (Mar. 4, 1909, ch. 321, § 306, 35 Stat. 1148).

Minor changes were made in phraseology.

§ 1657. Corruption of seamen and confederating with pirates

Whoever attempts to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or any goods, wares, or merchandise, or to turn pirate or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such; or

Whoever furnishes such pirate with any ammunition, stores, or provisions of any kind; or

Whoever fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or

Whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or

Whoever, being a seaman, confines the master of any vessel—

Shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 775.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 498 (Mar. 4, 1909, ch. 321, § 307, 35 Stat. 1148).

Mandatory punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

§ 1658. Plunder of distressed vessel

(a) Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(b) Whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or

Whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger or distress or shipwreck—

Shall be imprisoned not less than ten years and may be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 775.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 488 (Mar. 4, 1909, ch. 321, § 297, 35 Stat. 1146).

Mandatory punishment provision in subsection (a) was rephrased in the alternative.

Minor changes were made in phraseology.

§ 1659. Attack to plunder vessel

Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 775.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 489 (Mar. 4, 1909, ch. 321, § 298, 35 Stat. 1147).

Mandatory punishment provisions were rephrased in the alternative.

Cross References

Conspiracy to destroy vessels, see section 2271 of this title.

§ 1660. Receipt of pirate property

Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 775.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 552 (Mar. 4, 1909, ch. 321, § 334, 35 Stat. 1152).

Provision relating to concealment of pirate and words "is an accessory after the fact to such robbery or piracy" were omitted in view of definitive section 3 of this title.

§ 1661. Robbery ashore

Whoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and commits robbery on shore, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 775.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 493 (Mar. 4, 1909, ch. 321, § 302, 35 Stat. 1147).

Transposition of several words was made.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of robbery, see section 2516 of this title.

CHAPTER 83—POSTAL SERVICE

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AMENDMENTS

1970—Pub. L. 91-375, §§ 6(j)(19)(B), 36(B), 37(B), Aug. 12, 1970, 84 Stat. 778, 780, 781, substituted "officer" for "postmaster" in item 1709 and "Mailing periodical publications without prepayment of postage" for "Affidavits relating to second class mail" in item 1733, and added items 1735 to 1737, respectively.

1968—Pub. L. 90-560, § 2(2), Oct. 12, 1968, 82 Stat. 997, added item 1716A.

Pub. L. 90-384, § 1(b), July 5, 1968, 82 Stat. 292, struck out item 1727.

1960—Pub. L. 86-682, § 8, Sept. 2, 1960, 74 Stat. 706, added items 1733 and 1734.

CROSS REFERENCES

Assault or interference with postal clerk, see section 2116 of this title.

Breaking and entering into post office, see section 2115 of this title.

Definition of postal service, see section 12 of this title.

False—

Claims for postal losses, see section 288 of this title.

Statements in matters within jurisdiction of Federal agency, see section 1001 of this title.

Forcible entry into railway or steamboat post office, see section 2116 of this title.

Mail fraud, see sections 1341, 1342 of this title.

Money orders, counterfeiting, see section 500 of this title.

Postage stamps, domestic and foreign, counterfeiting, see sections 501 and 502 of this title.

Postal—

Employee having interest in mail contract, see section 440 of this title.

Supply contracts, combinations to fix prices or to prevent bids, see section 441 of this title.

Postmarking stamps, counterfeiting, see section 503 of this title.

Robbery of mail matter, see section 2114 of this title.

Venue of prosecution, see section 3237 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 sections 1008, 3001.

§ 1691. Laws governing postal savings

All the safeguards provided by law for the protection of public moneys, and all statutes relating to the embezzlement, conversion, improper handling, retention, use, or disposal of postal and money-order funds, false returns of postal and money-order business, forgery, counterfeiting, alteration, improper use or handling of postal and money-order blanks, forms, vouchers, accounts, and records, and the dies, plates, and engravings therefor, with the punishments provided for such offenses are extended and made applicable to postal savings depository business and funds and related matters.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on section 765 of title 39, U.S.C., 1940 ed., The Postal Service (June 25, 1910, ch. 386, § 15, 36 Stat. 818).

Changes of phraseology were made without change of substance.

§ 1692. Foreign mail as United States mail

Every foreign mail, while being transported across the territory of the United States under authority of law, is mail of the United States, and any depredation thereon, or offense in respect thereto, shall be punishable as though it were United States mail.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 359 (Mar. 4, 1909, ch. 321, § 229, 35 Stat. 1134).

Minor changes were made in phraseology and obvious surplusage omitted.

§ 1693. Carriage of mail generally

Whoever, being concerned in carrying the mail, collects, receives, or carries any letter or packet, contrary to law, shall be fined not more than $50 or imprisoned not more than thirty days, or both.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 303 (Mar. 4, 1909, ch. 321, § 180, 35 Stat. 1123).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

§ 1694. Carriage of matter out of mail over post routes

Whoever, having charge or control of any conveyance operating by land, air, or water, which regularly performs trips at stated periods on any post route, or from one place to another between which the mail is regularly carried, carries, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such conveyance, or to the current business of the carrier, or to some article carried at the same time by the same conveyance, shall, except as otherwise provided by law, be fined not more than $50.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 307 (Mar. 4, 1909, ch. 321, § 184, 35 Stat. 1124).

Words "by land, air, or water" were substituted for "stagecoach, railway car, steamboat" with necessary minor changes in phraseology.

Enumeration of persons having charge was omitted as unnecessary.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91-375, set out as a note under section 601 of Title 39, Postal Service.

§ 1695. Carriage of matter out of mail on vessels

Whoever carries any letter or packet on board any vessel which carries the mail, otherwise than in such mail, shall, except as otherwise provided by law, be fined not more than $50 or imprisoned not more than thirty days, or both.

(June 25, 1948, ch. 645, 62 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 308 (Mar. 4, 1909, ch. 321, § 185, 35 Stat. 1124).

The words "thirty days" were substituted for "one month," to make the term of imprisonment more definite and to conform to other comparable sections. (See section 1693 of this title.)

Minor changes were made in phraseology.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91-375, set out as a note under section 601 of Title 39, Postal Service.

§ 1696. Private express for letters and packets

(a) Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, shall be fined not more than $500 or imprisoned not more than six months, or both.

This section shall not prohibit any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped.

(b) Whoever transmits by private express or other unlawful means, or delivers to any agent thereof, or deposits at any appointed place, for the purpose of being so transmitted any letter or packet, shall be fined not more than $50.

(c) This chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only. Whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 601 of title 39, shall be observed as to each piece.

(June 25, 1948, ch. 645, 62 Stat. 777; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(14), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 304, 306, 309 (Mar. 4, 1909, ch. 321, §§ 181, 183, 186, 35 Stat. 1123, 1124; June 22, 1934, ch. 716, 48 Stat. 1207).

Section consolidates sections 304, 306, and 309 of title 18, U.S.C., 1940 ed. Reference to persons causing, procuring, aiding or assisting was omitted as such persons are principals under section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-375 substituted "section 601 of title 39" for "section 500 of title 39".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91-375, set out as a note under section 601 of Title 39, Postal Service.

§ 1697. Transportation of persons acting as private express

Whoever, having charge or control of any conveyance operating by land, air, or water, knowingly conveys or knowingly permits the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them contrary to law, shall be fined not more than $150.

(June 25, 1948, ch. 645, 62 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 305 (Mar. 4, 1909, ch. 321, § 182, 35 Stat. 1124).

Same changes were made as in section 1694 of this title.

§ 1698. Prompt delivery of mail from vessel

Whoever, having charge or control of any vessel passing between ports or places in the United States, and arriving at any such port or place where there is a post office, fails to deliver to the postmaster or at the post office, within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, shall be fined not more than $150.

For each letter or package so delivered he shall receive two cents unless the same is carried under contract.

(June 25, 1948, ch. 645, 62 Stat. 777.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 323 (Mar. 4, 1909, ch. 321, § 200, 35 Stat. 1126).

Changes were made in phraseology.

§ 1699. Certification of delivery from vessel

No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post office, except where waybilled for discharge at other ports in the United States at which the vessel is scheduled to call and the Postal Service does not determine that unreasonable delay in the mails will occur, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master ——, of the ——, arriving from ——, and now lying in the port of ——, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post office at —— every letter and every bag, packet, or parcel of letters on board

the said vessel during her last voyage, or in my possession or under my power or control, except where waybilled for discharge at other ports in the United States at which the said vessel is scheduled to call and which the Postal Service has not determined will be unreasonably delayed by remaining on board the said vessel for delivery at such ports.

Whoever, being the master or other person having charge or control of such vessel, breaks bulk before he has arranged for such delivery or onward carriage, shall be fined not more than $100.

(June 25, 1948, ch. 645, 62 Stat. 777; July 3, 1952, ch. 553, 66 Stat. 325; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(15), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 327 (Mar. 4, 1909, ch. 321, § 204, 35 Stat. 1127).

Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General" in two instances.

1952—Act July 3, 1952, provided for only the unloading of mail from a vessel as can be expedited by discharge at such port.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

CROSS REFERENCES

Foreign letters carried out of the mails, see section 602 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 602.

§ 1700. Desertion of mails

Whoever, having taken charge of any mail, voluntarily quits or deserts the same before he has delivered it into the post office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the Postal Service authorized to receive the same, shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 322 (Mar. 4, 1909, ch. 321, § 199, 35 Stat. 1126).

Minor changes were made in phraseology.

§ 1701. Obstruction of mails generally

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined not more than $100 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 324, 325 (Mar. 4, 1909, ch. 321, §§ 201, 202, 35 Stat. 1127).

Sections 324 and 325 of title 18, U.S.C., 1940 ed., were consolidated with changes of phraseology necessary to effect consolidation.

Words "carriage, horse, driver or", "car, steamboat", and "or vessel" were omitted as covered by "any carrier or conveyance".

The punishment provision is derived from said section 324 rather than from section 325 which provided only a fine of not more than $100 and related only to ferrymen.

CROSS REFERENCES

Temporary employees of the postal service or carriers with custody, see section 1008 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1008.

§ 1702. Obstruction of correspondence

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 317 (Mar. 4, 1909, ch. 321, § 194, 35 Stat. 1125; Feb. 25, 1925, ch. 318, 43 Stat. 977; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256).

Section 317 of said title 18, U.S.C., 1940 ed., was incorporated in this and section 1708 of this title.

Minor changes were made in phraseology.

§ 1703. Delay or destruction of mail or newspapers

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined not more than $500 or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or de-

stroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined not more than $100 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; May 24, 1949, ch. 139, § 37, 63 Stat. 95; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(16), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 318, 319 (Mar. 4, 1909, ch. 321, §§ 195, 196, 35 Stat. 1125, 1126).

Section consolidated sections 318 and 319 of said title 18, U.S.C., 1940 ed. The embezzlement and theft provisions of each were incorporated in sections 1709 and 1710 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 37] corrects typographical errors in section 1703 of title 18, U.S.C.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-375, § 6(j)(16)(A), inserted "secretes, destroys," preceding "detains" as a substitute for ", or secretes, or destroys any such letter, postal card, package, bag, or mail" deleted following "Postmaster General", substituted "Postal Service officer or employee" for "postmaster or Postal Service employee", and inserted "or the Postal Service" following "Postmaster General".

Subsec. (b). Pub. L. 91-375, § 6(j)(16)(B), substituted "Postal Service officer or employee" for "postmaster or Postal Service employee".

1949—Subsec. (a). Act May 24, 1949, § 37(a), substituted "secretes" for "secrets" following "Postmaster General".

Subsec. (b). Act May 24, 1949, § 37(b), substituted "newspapers" for "newspaper".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1704. Keys or locks stolen or reproduced

Whoever steals, purloins, embezzles, or obtains by false pretense any key suited to any lock adopted by the Post Office Department or the Postal Service and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or

Whoever knowingly and unlawfully makes, forges or counterfeits any such key, or possesses any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or

Whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key delivers any finished or unfinished lock or the interior part thereof, or key, used or designed for use by the department, to any person not duly authorized under the hand of the Postmaster General and the seal of the Post Office Department or the Postal Service, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer—

Shall be fined not more than $500 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(17), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 314 (Mar. 4, 1909, ch. 321, § 191, 35 Stat. 1125).

Reference to persons aiding, causing or assisting was omitted. Such persons are principals under section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 inserted "or the Postal Service" following "Post Office Department" in first and third pars.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1705. Destruction of letter boxes or mail

Whoever willfully or maliciously injures, tears down or destroys any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or breaks open the same or willfully or maliciously injures, defaces or destroys any mail deposited therein, shall be fined not more than $1,000 or imprisoned not more than three years.

(June 25, 1948, ch. 645, 62 Stat. 779; May 24, 1949, ch. 139, § 38, 63 Stat. 95.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 321 (Mar. 4, 1909, ch. 321, § 198, 35 Stat. 1126; May 18, 1916, ch. 126, § 10, 39 Stat. 162; July 28, 1916, ch. 261, § 1, 39 Stat. 418; May 7, 1934, ch. 220, § 1, 48 Stat. 667).

Words "or shall willfully take or steal such mail from or out of such letter box or other receptacle" were omitted as covered by section 1702 of this title. Prosecutions for theft of mail matter are invariably made under that section whereas this section is used as basis for prosecutions for malicious mischief to mail boxes or receptacles. By Postal Regulations (1928), section 700, paragraph 2, an ordinary letter box is within this section and also section 1702 of this title. *Huebner* v. *United States* (C.C.A. 1928, 28 F. 2d 929).

Reference to persons assisting or aiding was omitted. Such persons are principals under definitive section 2 of this title.

Minor changes were made in phraseology.

1949 ACT

As amended by this section [section 38] of the bill, section 1705 of title 18, U.S.C., is brought more closely into conformity with the original statute from which it was derived by eliminating an inadvertent reference

to a "conveyance" which was not in the original statute. (See S. Rept. No. 133, 81st Cong.)

AMENDMENTS

1949—Act May 24, 1949, omitted reference to a "conveyance" which was not in the original statute.

§ 1706. Injury to mail bags

Whoever tears, cuts, or otherwise injures any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or draws or breaks any staple or loosens any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 779.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 312 (Mar. 4, 1909, ch. 321, § 189, 35 Stat. 1124).

A fine of "$1,000" was substituted for "$500" thus increasing the maximum to correspond with other comparable sections. (See section 1705 of this title.)

Minor verbal changes were made.

§ 1707. Theft of property used by Postal Service

Whoever steals, purloins, or embezzles any property used by the Postal Service, or appropriates any such property to his own or any other than its proper use, or conveys away any such property to the hindrance or detriment of the public service, shall be fined not more than $1,000 or imprisoned not more than three years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(18), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 313 (Mar. 4, 1909, ch. 321, § 190, 35 Stat. 1124).

The phrase "used by" was substituted for "in use by or belonging to" in order to limit the application of the section to property used by the Post Office Department. Theft of public property belonging to governmental departments is covered by section 641 of this title.

A fine of "$1,000" was substituted for "$200," thus increasing the maximum to conform with other comparable sections. (See section 1705 of this title.)

The smaller penalty for an offense involving property valued at $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Post Office Department".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1708. Theft or receipt of stolen mail matter generally

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; May 24, 1949, ch. 139, § 39, 63 Stat. 95; July 1, 1952, ch. 535, 66 Stat. 314.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 317, 321 (Mar. 4, 1909, ch. 321, §§ 194, 198, 35 Stat. 1125, 1126; May 18, 1916, ch. 126, § 10, 39 Stat. 162; July 28, 1916, ch. 261, § 1, 39 Stat. 418; Feb. 25, 1925, ch. 318, 43 Stat. 977; May 7, 1934, ch. 220, § 1, 48 Stat. 667; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256).

Each of these two sections has been divided. Provisions relating to theft or larceny of mail were placed in this section.

Words "letter box, mail receptacle, or any mail route" are from section 321 of title 18, U.S.C., 1940 ed. Such receptacles are authorized depositaries. (See *Rosen* v. *United States*, N.Y. 1917, 38 S.Ct. 148, 245 U.S. 467, 62 L.Ed. 406, and *Foster* v. *Biddle*, C.C.A. Kan. 1926, 14 F.2d 280, involving indictment under section 317 of title 18, U.S.C., 1940 ed.) No cases are reported of prosecutions for mail theft under section 321 of title 18, U.S.C., 1940 ed., which relates primarily to malicious mischief respecting letter boxes.

Language omitted from section 317 of title 18, U.S.C., 1940 ed., and all of section 321 of title 18, U.S.C., 1940 ed., except that above quoted, was incorporated in sections 1702 and 1705 of this title.

Words "or aids in buying, receiving, or concealing" were omitted as unnecessary in view of the definition of principal in section 2 of this title.

The smaller penalty for an offense involving $100 or less was added. (See sections 641 and 645 of this title.)

Minor changes were made in phraseology.

1949 ACT

This section [section 39] corrects a typographical error in section 1708 of title 18, U.S.C.

AMENDMENTS

1952—Act July 1, 1952, made any thefts or receipt of stolen mail a felony regardless of the monetary value of the thing stolen.

1949—Act May 24, 1949, substituted "buys" for "buy" in the third par.

CROSS REFERENCES

Larceny from mail, see section 2114 of this title.

Temporary employees of the postal service or carriers with custody, see section 1008 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1008.

§ 1709. Theft of mail matter by officer or employee

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 78); Aug. 12, 1970, Pub. L. 91-375, § 6(j)(19)(A), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 318 (Mar. 4, 1909, ch. 321, § 195, 35 Stat. 1125).

The provisions of said section 318 of title 18, U.S.C., 1940 ed., were incorporated in this section and section 1703 of this title.

The fine of "$500" was increased to "$2,000" as more proportionate to the imprisonment provision and to conform with other comparable sections. (See sections 1702 and 1708 of this title.)

Changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "officer" for "postmaster" in the catchline, and in the text, substituted "Postal Service officer or employee" for "postmaster or Postal Service employee" and "entrusted" for "intrusted" and inserted "or of the Postal Service" following "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1710. Theft of newspapers

Whoever, being a Postal Service officer or employee, takes or steals any newspaper or package of newspapers from any post office or from any person having custody thereof, shall be fined not more than $100 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 780; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(20), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 319 (Mar. 4, 1909, ch. 321, § 196, 35 Stat. 1126).

Theft provisions alone are retained in this section. Those relating to other offenses were incorporated in section 1703 of this title.

Words "mail or" following "steals any" were omitted as covered by section 1709 of this title.

Changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service officer or employee" for "postmaster or Postal Service employee".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1711. Misappropriation of postal funds

Whoever, being a Postal Service officer or employee, loans, uses, pledges, hypothecates, or converts to his own use, or deposits in any bank, or exchanges for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner, in the execution or under color of his office, employment, or service, whether or not the same shall be the money or property of the United States; or fails or refuses to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required to do so by law or the regulations of the Postal Service, or upon demand or order of the Postal Service, either directly or through a duly authorized officer or agent, is guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled or imprisoned not more than ten years, or both; but if the amount or value thereof does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prohibit any Postal Service officer or employee from depositing, under the direction of the Postal Service, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as Postal Service officer or employee any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postal Service, for the purpose of remitting surplus funds from one post office to another.

(June 25, 1948, ch. 645, 62 Stat. 780; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(21), 84 Stat. 778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 355 (Mar. 4, 1909, ch. 321, § 225, 35 Stat. 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Said section 355 was divided into two sections, this section and section 3498 of this title.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Changes of phraseology only were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service officer or employee" and "Postal Service" for "postmaster or Postal Service employee" and "Post Office Department" in first par., "Postal Service officer or employee" for "Postmaster" in two instances in second par., and "Postal Service" for "Postmaster General" once in first par. following "order of the" and twice in second par., respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1712. Falsification of postal returns to increase compensation

Whoever, being a Postal Service officer or employee, makes a false return, statement, or account to any officer of the United States, or makes a false entry in any record, book, or account, required by law or the rules or regulations of the Postal Service to be kept in respect of the business or operations of any post office or other branch of the Postal Service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post office; or

Whoever, being a Postal Service officer or employee in any post office or station thereof, for the purpose of increasing the emoluments or compensation of his office, induces, or attempts to induce, any person to deposit mail matter in, or forward in any manner for mailing at, the officer where such officer or employee is employed, knowing such matter to be properly mailable at another post office—

Shall be fined not more than $500 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 780; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(22), 84 Stat. 779.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 329 and on section 172 of title 39, U.S.C., 1940 ed., The Postal Service (Aug. 4, 1886, ch. 901, § 3, 24 Stat. 221; Mar. 4, 1909, ch. 321, § 206, 35 Stat. 1128; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Said sections were consolidated.

The texts of the two sections were substantially identical except that said section 172 of title 39, U.S.C., 1940 ed., provided that "whenever, upon evidence deemed satisfactory to him, the Postmaster General shall determine that any such false return has been made, he may, by order, fix absolutely the compensation of the postmaster for such special delivery during any quarter or quarters which he shall deem affected by such false return, and the General Accounting Office shall adjust the postmaster's account accordingly", the words "General Accounting Office" having been substituted for "Auditor" on the authority of the act of June 10, 1921, shown in the credits above. This particular language was omitted because such powers and duties as it prescribes would devolve upon the Postmaster General without legislation and also because said section 172 of Title 39, which was derived from the act of August 4, 1886, shown in the credits above, was impliedly repealed by the general repealing clause of section 341 of the Criminal Code of 1909. Section 208 of that Code contained the provisions which formed the basis for said section 329 of Title 18.

Reference in said section 329 of title 18, U.S.C., 1940 ed., to persons assisting, causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service officer or employee" for "postmaster or Postal Service employee" and "Postal Service" for "Post Office Department" following "rules or regulations of the" in first par. and "Postal Service officer or employee" and "officer or employee" for "postmaster or employee" and "postmaster or other person" in second par., respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1713. Issuance of money orders without payment

Whoever, being an officer or employee of the Postal Service, issues a money order without having previously received the money therefor, shall be fined not more than $500.

(June 25, 1948, ch. 645, 62 Stat. 781; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(23), 84 Stat. 779.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 333 (Mar. 4, 1909, ch. 321, § 210, 35 Stat. 1129).

Minor change was made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "an officer or employee of the Postal Service" for "a postmaster or other person employed in any branch of the Postal Service".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1714. Foreign divorce information as nonmailable

Every written or printed card, circular, letter, book, pamphlet, advertisement, or notice of any kind, giving or offering to give information concerning where or how or through whom a divorce may be secured in a foreign country, and designed to solicit business in connection with the procurement thereof, is nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly deposits, for mailing or delivery, anything declared by this section to be nonmailable, or knowingly takes the same from the mails for the purpose of circulating or disposing thereof, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 781.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338c (Aug. 10, 1939, ch. 638, § 1, 53 Stat. 1341).

The word "one" was substituted for "five" in the punishment clause thus bringing the offense within the misdemeanor category and permitting prosecution on information. The 5-year penalty was disproportionate in view of the 2-year penalty in section 1715 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

CROSS REFERENCES

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3001.

§ 1715. Firearms as nonmailable; regulations

Pistols, revolvers, and other firearms capable of being concelaled on the person are nonmailable and shall not be deposited in or carried by the mails or delivered by any officer or employee of the Postal Service. Such articles may be conveyed in the mails, under such regulations as the Postal Service shall prescribe, for use in connection with their official duty, to officers of the Army, Navy, Air Force, Coast Guard, Marine Corps, or Organized Reserve Corps; to officers of the National Guard or Militia of a State, Territory, or District; to officers of the United States or of a State, Territory, or District whose official duty is to serve warrants of arrest or commitments; to employees of the Postal Service; to officers and employees of enforcement agencies of the United States; and to watchmen engaged in guarding the property of the United States, a State, Territory, or District. Such articles also may be conveyed in the mails to manufacturers of firearms or bona fide dealers therein in customary trade shipments, including such articles for repairs or replacement of parts, from one to the other, under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any pistol, revolver, or firearm declared nonmailable by this section, shall be fined not more than $1,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 781; May 24, 1949, ch. 139, § 40, 63 Stat. 95; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(24), 84 Stat. 779.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 361 (Feb. 8, 1927, ch. 75, § 1, 44 Stat. 1059; May 15, 1939, ch. 134, 53 Stat. 744; Mar. 7, 1942, ch. 160, 56 Stat. 141).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 40] inserts "Air Force," in section 1715 of title 18, U.S.C., in view of the establishment in 1947 of this separate branch of the armed forces, and substitutes, "Organized" for "Officers'", preceding "Reserve Corps", to conform to section 2 of title 10, U.S.C., as amended by the act of March 25, 1948 (ch. 157, § 1, 62 Stat. 87), which grouped all reserve branches into a reserve component called the Organized Reserve Corps.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General" following "such regulations as the" in two instances and "officer or employee of" for "postmaster, letter carrier, or other person in" in first par., respectively.

1949—Act May 24, 1949, inserted "Air Force" following "Navy" and substituted "Organized" for "Officers'" preceding "Reserve Corps" in first par, to make section applicable to the Air Force and to conform to the grouping of all reserve branches into a single reserve component.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Firearms provisions of sections 921 to 928 of this title as not modifying or affecting this section, see Modification of Other Laws note set out under section 921 of this title.

Firearms shipments or transportation by licensed importers, licensed manufacturers, and licensed dealers for use in connection with official duties not unlawful when conveyed in the mails, see section 922 of this title.

Seizure and disposition of nonmailable matter, see section 3001 et. seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 922 of this title; title 39 section 3001.

§ 1716. Injurious articles as nonmailable

(a) All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, reptiles, and all explosives, inflammable materials, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property, whether or not sealed as first-class matter, are nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof, nor by any officer or employee of the Postal Service.

(b) The Postal Service may permit the transmission in the mails, under such rules and regulations as it shall prescribe as to preparation and packing, of any such articles which are not outwardly or of their own force dangerous or injurious to life, health, or property.

(c) The Postal Service is authorized and directed to permit the transmission in the mails, under regulations to be prescribed by it, of live scorpions which are to be used for purposes of

medical research or for the manufacture of antivenom. Such regulations shall include such provisions with respect to the packaging of such live scorpions for transmission in the mails as the Postal Service deems necessary or desirable for the protection of Postal Service personnel and of the public generally and for ease of handling by such personnel and by any individual connected with such research or manufacture. Nothing contained in this paragraph shall be construed to authorize the transmission in the mails of live scorpions by means of aircraft engaged in the carriage of passengers for compensation or hire.

(d) The transmission in the mails of poisonous drugs and medicines may be limited by the Postal Service to shipments of such articles from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians under such rules and regulations as it shall prescribe.

(e) The transmission in the mails of poisons for scientific use, and which are not outwardly dangerous or of their own force dangerous or injurious to life, health, or property, may be limited by the Postal Service to shipments of such articles between the manufacturers thereof, dealers therein, bona fide research or experimental scientific laboratories, and such other persons who are employees of the Federal, a State, or local government, whose official duties are comprised, in whole or in part, of the use of such poisons, and who are designated by the head of the agency in which they are employed to receive or send such articles, under such rules and regulations as the Postal Service shall prescribe.

(f) All spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind are nonmailable and shall not be deposited in or carried through the mails.

(g) All knives having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife, or (2) by operation of inertia, gravity, or both, are nonmailable and shall not be deposited in or carried by the mails or delivered by any officer or employee of the Postal Service. Such knives may be conveyed in the mails, under such regulations as the Postal Service shall prescribe—

(1) to civilian or Armed Forces supply or procurement officers and employees of the Federal Government ordering, procuring, or purchasing such knives in connection with the activities of the Federal Government;

(2) to supply or procurement officers of the National Guard, the Air National Guard, or militia of a State, Territory, or the District of Columbia ordering, procuring, or purchasing such knives in connection with the activities of such organizations;

(3) to supply or procurement officers or employees of the municipal government of the District of Columbia or of the government of any State or Territory, or any county, city or other political subdivision of a State or Territory, ordering, procuring, or purchasing such knives in connection with the activities of such government; and

(4) to manufacturers of such knives or bona fide dealers therein in connection with any shipment made pursuant to an order from any person designated in paragraphs (1), (2), and (3).

The Postal Service may require, as a condition of conveying any such knife in the mails, that any person proposing to mail such knife explain in writing to the satisfaction of the Postal Service that the mailing of such knife will not be in violation of this section.

(h) Any advertising, promotional, or sales matter which solicits or induces the mailing of anything declared nonmailable by this section is likewise nonmailable unless such matter contains wrapping or packaging instructions which are in accord with regulations promulgated by the Postal Service.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything delcared nonmailable by this section, whether or not transmitted in accordance with the rules and regulations authorized to be prescribed by the Postal Service, with intent to kill or injure another, or injure the mails or other property, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Whoever is convicted of any crime prohibited by this section, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion, shall so order.

(June 25, 1948, ch. 645, 62 Stat. 781; May 8, 1952, ch. 246, 66 Stat. 67; June 29, 1955, ch. 224, 69 Stat. 191; Sept. 2, 1957, Pub. L. 85-268, 71 Stat. 594; Aug. 12, 1958, Pub. L. 85-623, § 5, 72 Stat. 562; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(25), 84 Stat. 779; Dec. 15, 1971, Pub. L. 92-191, § 1, 85 Stat. 647.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 340 (Mar. 4, 1909. ch. 321, § 217, 35 Stat. 1131; May 25, 1920, ch. 196, 41 Stat. 620; Jan. 11, 1929, ch. 53, 45 Stat. 1072; June 19, 1934, ch. 650, 48 Stat. 1063).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The maximum of "twenty years" was reduced to "ten years" as more consistent with such comparable sections as sections 111 and 1113 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1971—Subsecs. (a) to (g). Pub. L. 92-191 designated the existing seven paragraphs preceding the penal provisions as subsecs. (a) to (g), respectively.

Subsec. (h). Pub. L. 92-191 added subsec. (h).

1970—First par. Pub. L. 91-375, § 6(j)(25)(B)(ii), substituted "officer or employee of the Postal Service" for "letter carrier".

Second par. Pub. L. 91-375, § 6(j)(25)(A), substituted "Postal Service" and "it shall prescribe" for "Postmaster General" and "he shall prescribe".

Third par. Pub. L. 91-375, § 6(j)(25)(A), substituted "Postal Service" for "Postmaster General" in two instances, "prescribed by it" for "prescribed by him", "antivenom" for "antivenin", "necessary or desirable" for "necessary or advisable", and "Postal Service personnel" for "Post Office Department personnel".

Fourth par. Pub. L. 91-375, § 6(j)(25)(A), substituted "Postal Service" and "it shall prescribe" for "Postmaster General" and "he shall prescribe" and deleted the comma following "veterinarians".

Fifth par. Pub. L. 91-375 § 6(j)(25)(B)(i) substituted "Postal Service" for "Postmaster General" in two instances.

Seventh par. Pub. L. 91-375, § 6(j)(25)(B)(i), (iii), substituted "Postal Service" for "Postmaster General" in three instances, and "officer or employee of the Postal Service" for "postmaster, letter carrier, or other person in the postal service", respectively.

Eighth par. Pub. L. 91-375, § 6(j)(25)(B)(i), substituted "Postal Service" for "Postmaster General".

Ninth par. Pub. L. 91-375, § 6(j)(25)(B)(i), substituted "Postal Service" for "Postmaster General".

Tenth par. Pub. L. 91-375, § 6(j)(25)(B)(i), substituted "Postal Service" for "Postmaster General".

1958—Pub. L. 85-623 inserted paragraph prohibiting mailing of switchblade knives except in connection with Armed Forces or other Government orders.

1957—Pub. L. 85-268 reduced penalty from two to one year for mailing nonmailable articles; increased penalty from ten to twenty years for mailing nonmailable matter with intent to kill or injure another or injure the mails or other property but where death does not result; and provided death penalty or life imprisonment for mailing nonmailable matter resulting in death.

1955—Act June 29, 1955, inserted paragraph to permit the transportation in the mails of live scorpions for certain purposes.

1952—Act May 8, 1952, inserted fourth paragraph to extend the Postmaster General's authority as it relates to the transmission of poisonous drugs through the mails for scientific purposes.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 92-191 provided that: "The amendments made by this Act [adding subsec. (h) of this section and subsec. (g) of section 3001 of Title 39, Postal Service] shall become effective at the beginning of the third calendar month following the date of enactment of this Act [Dec. 15, 1971] or on the date section 3001 of title 39, United States Code, becomes effective [July 1, 1971] pursuant to section 15(a) of Public Law 91-375 [set out as an Effective Date note preceding section 101 of title 39], whichever is the later."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-623 effective on the sixtieth day after Aug. 12, 1958, see Effective Date note set out under section 1241 of Title 15, Commerce and Trade.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this section, see Pub. L. 86-613, § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

CROSS REFERENCES

Mailing of packages containing any plant or plant product into a State maintaining terminal inspection thereof, without marking the contents of such package on the outside, prohibited, see section 166 of Title 7, Agriculture.

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3001.

§ 1716A. Nonmailable motor vehicle master keys

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any matter declared to be nonmailable by section 3002 of title 39, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(Added Pub. L. 90-560, § 2(1), Oct. 12, 1968, 82 Stat. 997, and amended Pub. L. 91-375, Aug. 12, 1970, § 6(j)(26), 84 Stat. 780.)

AMENDMENTS

1970—Pub. L. 91-375 substituted "section 3002" for "section 4010" of title 39.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section 3 of Pub. L. 90-560 provided in part that this section is effective on the sixtieth day after Oct. 12, 1968.

§ 1717. Letters and writings as nonmailable; opening letters[1]

(a) Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, in violation of sections 499, 506, 793, 794, 915, 954, 956, 957, 960, 964, 1017, 1542, 1543, 1544 or 2388 of this title or which contains any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is nonmailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

(b) Whoever uses or attempts to use the mails or Postal Service for the transmission of any matter declared by this section to be nonmailable, shall be fined not more than $5,000 or imprisoned not more than ten years or both.

(June 25, 1948, ch. 645, 62 Stat. 782; Sept. 2, 1960, Pub. L. 86-682, § 12(b), 74 Stat. 708; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(27), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 343, 344, 345, 346 (June 15, 1917, ch. 30, title XII, §§ 1-3, title XIII,

[1] Catchline was not amended to reflect repeal of subsec. (c) by Pub. L. 86-682.

§ 1, 40 Stat. 230, 231; Mar. 28, 1940, ch. 72, § 9, 54 Stat. 80).

Section consolidates said sections 343-345 of title 18, U.S.C., 1940 ed. The provision as to opening letters was incorporated in paragraph (c).

Venue provisions in said section 345 of title 18, U.S.C., 1940 ed., were omitted as covered by section 3237 of this title.

Section 346 of title 18, U.S.C., 1940 ed., defining "United States" was omitted. It is incorporated, however, in section 5 of this title.

References in text to other sections do not include definitive sections. Only those susceptible of violation are cited.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in arrangement, translation, and phraseology.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-375 struck out "of the United States" following "Postal Service".

1960—Subsec. (c). Pub. L. 86-682 repealed subsec. (c), which related to the opening of letters, effective Sept. 1, 1960.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Seizure and disposition of nonmailable matter, see section 3001 et. seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3001; title 22 section 614.

§ 1718. Libelous matter on wrappers or envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which is written or printed or otherwise impressed or apparent any delineation, epithet, term, or language of libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, is nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 782; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(28), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 335 (Mar. 4, 1909, ch. 321, § 212, 35 Stat. 1129).

Provision relating to mailing indecent and obscene matter was incorporated in chapter "Obscenity," section 1463 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

The punishment provisions were rewritten to make the maximum fine "$1,000" and the maximum imprisonment, "one year" instead of "$5,000" and "five years." The offense is essentially criminal libel which normally is regarded as a misdemeanor. (See New York Penal Code, sections 1340 and 1341.)

Minor verbal changes were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3001.

§ 1719. Franking privilege

Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than $300.

(June 25, 1948, ch. 645. 62 Stat. 783.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 357 (Mar. 4, 1909, ch. 321, § 227, 35 Stat. 1134).

Minor verbal change was made. Section 746(f) of title 8, U.S.C., 1940 ed., Aliens and Nationality, providing same penalty for misuse of franking privilege in naturalization service, should be repealed as covered by this section. The proviso in section 337 of title 39, U.S.C., 1940 ed., The Postal Service, should also be repealed for the same reason.

CROSS REFERENCES

Franking privilege, see section 3201 et seq. of Title 39, Postal Service.

§ 1720. Canceled stamps and envelopes

Whoever uses or attempts to use in payment of postage, any canceled postage stamp, whether the same has been used or not, or removes, attempts to remove, or assists in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or knowingly possesses any such postage stamp, stamped envelope, or postal card, with intent to use the same or knowingly sells or offers to sell any such postage stamp, stamped envelope, or postal card, or

uses or attempts to use the same in payment of postage; or

Whoever unlawfully and willfully removes from any mail matter any stamp attached thereto in payment of postage; or

Whoever knowingly uses in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose—

Shall be fined not more than $500 or imprisoned not more than one year, or both; but if he is a person employed in the Postal Service, he shall be fined not more than $500 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 783.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 328 (Mar. 4, 1909, ch. 321, § 205, 35 Stat. 1127).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

CROSS REFERENCES

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 492 of this title.

§ 1721. Sale or pledge of stamps

Whoever, being a Postal Service officer or employee, knowingly and willfully: uses or disposes of postage stamps, stamped envelopes, or postal cards entrusted to his care or custody in the payment of debts, or in the purchase of merchandise or other salable articles, or pledges or hypothecates the same or sells or disposes of them except for cash; or sells or disposes of postge stamps or postal cards for any larger or less sum than the values indicated on their faces; or sells or disposes of stamped envelopes for a larger or less sum than is charged therefor by the Postal Service for like quantities; or sells or disposes of postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such officer or employee is employed; or for the purpose of increasing the emoluments, or compensation of any such officer or employee, inflates, or induces the inflation of the receipts of any post office or any station or branch thereof; or sells or disposes of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Postal Service; shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 783; Aug. 1, 1956, ch. 818, 70 Stat. 784; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(29), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on section 331 of title 18 and section 364 of title 39, The Postal Service, both U.S.C., 1940 ed. (R.S. § 3920; Mar. 4, 1909, ch. 321, § 208, 35 Stat. 1128).

Said sections were consolidated with only minor changes in phraseology.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service officer or employee" for "postmaster or postal service employee", "Postal Service" for "Post Office Department" in two instances, "officer or employee" for "postmaster or other person", and "any such officer or employee" for "the postmaster or any employee of a post office or station or branch thereof", respectively.

1956—Act Aug. 1, 1956, broadened the class of postal employees subject to penalties prescribed by this section and broadened the prohibition to include the inflation of receipts by means other than the disposing of stamps, stamped envelopes, or postal cards.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1722. False evidence to secure second-class rate

Whoever knowingly submits to the Postal Service or to any officer or employee of the Postal Service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than $500.

(June 25, 1948, ch. 645, 62 Stat. 783; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(30), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 353 (Mar. 4, 1909, ch. 321, § 223, 35 Stat. 1133).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal change was made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "the Postal Service or to any officer or employee of the Postal Service" for "any postmaster or to the Post Office Department or any officer of the Postal Service".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1723. Avoidance of postage by using lower class matter

Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of a duly authorized officer of the Postal Service such postage shall be remitted.

Whoever knowingly conceals or incloses any matter of a higher class in that of a lower class, and deposits the same for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined not more than $100.

(June 25, 1948, ch. 645, 62 Stat. 784; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(31), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 351 (Mar. 4, 1909, ch. 321, § 221, 35 Stat. 1132).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "a duly authorized officer of the Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1724. Postage on mail delivered by foreign vessels

Except as otherwise provided by treaty or convention the Postal Service may require the transportation by any steamship of mail between the United States and any foreign port at the compensation fixed under authority of law. Upon refusal by the master or the commander of such steamship or vessel to accept the mail, when tendered by the Postal Service or its representative, the collector or other officer of the port empowered to grant clearance, on notice of the refusal aforesaid, shall withhold clearance, until the collector or other officer of the port is informed by the Postal Service or its representative that the master or commander of the steamship or vessel has accepted the mail or that conveyance by his steamship or vessel is no longer required by the Postal Service.

(June 25, 1948, ch. 645, 62 Stat. 784; Sept. 25, 1951, ch. 413, § 1(4), 65 Stat. 336; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(32), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 326 (Mar. 4, 1909, ch. 321, § 203, 35 Stat. 1127; Feb. 6, 1929, ch. 157, 45 Stat. 1153).

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" and "Postal Service or its representative" for "Postmaster General" and "Postmaster General or his representative" in two instances.

1951—Act Sept. 25, 1951, repealed former first paragraph relating to penalties for failure to pay postage on or unlawful conveyance of mail to or from any part of the United States by foreign vessels.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1725. Postage unpaid on deposited mail matter

Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined not more than $300.

(June 25, 1948, ch. 645, 62 Stat. 784; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(33), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 321a (May 7, 1934, ch. 220, § 2, 48 Stat. 667).

Reference to persons aiding or assisting was deleted as unnecessary since such persons are made principals by section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1726. Postage collected unlawfully

Whoever, being a postmaster or other person authorized to receive the postage of mail matter, fraudulently demands or receives any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined not more than $100 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 784.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 330 (Mar. 4, 1909, ch. 321, § 207, 35 Stat. 1128).

Minor verbal changes were made.

[§ 1727. Repealed. Pub. L. 90-384, § 1(a), July 5, 1968, 82 Stat. 292]

Section, act June 25, 1948, c 645, 62 Stat. 785, provided for a fine of not more than $50 for postage accounting violations.

SAVINGS PROVISION

Section 2 of Pub. L. 90-384 provided that: "Nothing in this Act [repealing this section] shall be construed to affect in any way any prosecution for any offense occurring prior to the date of enactment of such Act [July 5, 1968]."

§ 1728. Weight of mail increased fraudulently

Whoever places any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 785.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 358 (Mar. 4, 1909, ch. 321, § 228, 35 Stat. 1134).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

§ 1729. Post office conducted without authority

Whoever, without authority from the Postal Service, sets up or professes to keep any office or place of business bearing the sign, name, or title of post office, shall be fined not more than $500.

(June 25, 1948, ch. 645, 62 Stat. 785; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(34), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 302 (Mar. 4, 1909, ch. 321, § 179, 35 Stat. 1123).

Minor verbal changes were made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Establishing post offices, see section 401 et seq. of Title 39, Postal Service.

§ 1730. Uniforms of carriers

Whoever, not being connected with the letter-carrier branch of the Postal Service, wears the uniform or badge which may be prescribed by the Postal Service to be worn by letter carriers, shall be fined not more than $100 or imprisoned not more than six months, or both.

The provisions of the preceding paragraph shall not apply to an actor or actress in a theatrical, television, or motion-picture production who wears the uniform or badge of the letter-carrier branch of the Postal Service while portraying a member of that service, if the portrayal does not tend to discredit that service.

(June 25, 1948, ch. 645, 62 Stat. 785; July 21, 1968, Pub. L. 90-413, 82 Stat. 396; Aug. 12, 1970, Pub. L 91-375, § 6(j)(35), 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 310 (Mar. 4, 1909, ch. 321, § 187, 35 Stat. 1124).

Minor verbal change was made.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General" preceding "to be worn" in first par.

1968—Pub. L. 90-413 added provision exempting an actor or actress in a theatrical, television, or motion-picture production who wears the uniform or badge of the letter-carrier branch of the Postal Service from the penalties imposed by this section.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Uniform for carriers, see section 1001 of Title 39, Postal Service.

§ 1731. Vehicles falsely labeled as carriers

It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail", or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used.

Whoever violates, and every owner, receiver, lessee, or managing operator who suffers, or permits the violation of, any provision of this section, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 785.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 311 (Mar. 4, 1909, ch. 321, § 188, 35 Stat. 1124).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment provision was rewritten to conform more closely with comparable offenses in other sections. (See sections 1729 and 1730 of this title.)

Minor verbal changes were made.

§ 1732. Approval of bond or sureties by postmaster

Whoever, being a postmaster, affixes his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or knowingly, or without the exercise of due diligence, approves any bond of a bidder with insufficient sureties, or knowingly makes any false or fraudulent certificate, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and shall be dismissed from office and disqualified from holding the office of postmaster.

(June 25, 1948, ch. 645, 62 Stat. 785.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 352 (Mar. 4, 1909, ch. 321, § 222, 35 Stat. 1133).

Minor verbal changes were made.

§ 1733. Mailing periodical publications without prepayment of postage

Whoever, except as permitted by law, knowingly mails any periodical publication without the prepayment of postage, or, being an officer or employee of the Postal Service, knowingly permits any periodical publication to be mailed without prepayment of postage, shall be fined

not more than $1,000, or imprisoned not more than one year, or both.

(Added Pub. L. 86-682, § 7, Sept. 2, 1960, 74 Stat. 705, and amended Pub. L. 91-375, § 6(j)(36)(A), Aug. 12, 1970, 84 Stat. 780.)

AMENDMENTS

1970—Pub. L. 91-375 substituted "Mailing periodical publications without prepayment of postage" for "Affidavits relating to second class mail" as section catchline, deleted subsec. (a) penalty provision for fine of not more than $1,000 for each refusal to make affidavits relating to second class mail when tendering for mailing such mail without any affidavits, and reenacted subsec. (b) as the section without any subsection designation, inserting therein," except as permitted by law," and substituting "periodical publication" for "second class mail" in two instances, "prepayment of postage" for "payment of postage" where first appearing, and "officer or employee of the Postal Service" for "postmaster or postal official".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section 11 of Pub. L. 86-682 provided that this section shall be effective Sept. 1, 1960.

§ 1734. Editorials and other matter as "advertisements"

Whoever, being an editor or publisher, prints in a publication entered as second class mail, editorial or other reading matter for which he has been paid or promised a valuable consideration, without plainly marking the same "advertisement" shall be fined not more than $500.

(Added Pub. L. 86-682, § 7, Sept. 2, 1960, 74 Stat. 706.)

EFFECTIVE DATE

Section 11 of Pub. L. 86-682 provided that this section shall be effective Sept. 1, 1960.

§ 1735. Sexually oriented advertisements

(a) Whoever—

(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such section; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section;

shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) For the purposes of this section, the term "sexually oriented advertisement" shall have the same meaning as given it in section 3010(d) of title 39.

(Added Pub. L. 91-375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.)

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1736. Restrictive use of information

(a) No information or evidence obtained by reason of compliance by a natural person with any provision of section 3010 of title 39, or regulations issued thereunder, shall, except as provided in subsection (c) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding.

(b) The fact of the performance of any act by an individual in compliance with any provision of section 3010 of title 39, or regulations issued thereunder, shall not be deemed the admission of any fact, or otherwise be used, directly or indirectly, as evidence against that person in a criminal proceeding, except as provided in subsection (c) of this section.

(c) Subsections (a) and (b) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

(Added Pub. L. 91-375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.)

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1737. Manufacturer of sexually related mail matter

(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section 3008 or 3010 of title 39, or in violation of any regulation of the Postal Service issued under such section, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) As used in this section, the term "sexually related mail matter" means any matter which is within the scope of section 3008(a) or 3010(d) of title 39.

(Added Pub. L. 91-375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.)

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CHAPTER 84—PRESIDENTIAL ASSASSINATION, KIDNAPING, AND ASSAULT

Sec.
1751. Presidential assassination, kidnaping, and assault; penalties.
1752.[1] Temporary residence of the President.

§ 1751. Presidential assassination, kidnaping, and assault; penalties

(a) Whoever kills any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice-President-elect, or any individual who is acting as President under the Constitution and laws of the United States, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

(f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed $100,000 for information and services concerning a violation of this section. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(Added Pub. L. 89-141, § 1, Aug. 28, 1965, 79 Stat. 580.)

Cross References

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

Section Referred to in Other Sections

This section is referred to in section 2516 of this title.

§ 1752. Temporary residence of the President

(a) It shall be unlawful for any person or group of persons—

(1) willfully and knowingly to enter or remain in

(i) any building or grounds designated by the Secretary of the Treasury as temporary residences of the President or as temporary offices of the President and his staff, or

(ii) any posted, cordoned off, or otherwise restricted area of a building or grounds where the President is or will be temporarily visiting,

in violation of the regulations governing ingress or egress thereto;

(2) with intent to impeded or disrupt the orderly conduct of Government business or official functions, to engage in disorderly or disruptive conduct in, or within such proximity to, any building or grounds designated in paragraph (1) when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;

(3) willfully and knowingly to obstruct or impede ingress or egress to or from any building, grounds, or area designated or enumerated in paragraph (1); or

(4) willfully and knowingly to engage in any act of physical violence against any person or property in any building, grounds, or area designated or enumerated in paragraph (1).

(b) Violation of this section, and attempts or conspiracies to commit such violations, shall be punishable by a fine not exceeding $500 or imprisonment not exceeding six months, or both.

(c) Violation of this section, and attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney in the Federal district court having jurisdiction of the place where the offense occurred.

(d) The Secretary of the Treasury is authorized—

(1) to designate by regulations the buildings and grounds which constitute the temporary residences of the President and the temporary offices of the President and his staff, and

(2) to prescribe regulations governing ingress or egress to such buildings and grounds and to posted, cordoned off, or otherwise restricted area where the President is or will be temporarily visiting.

(e) None of the laws of the United States or of the several States and the District of Columbia shall be superseded by this section.

[1] Section added by Pub. L. 91-644, title V, § 18, Jan. 2, 1971, 84 Stat. 1891, without addition to analysis.

(Added Pub. L. 91-644, title V, § 18, Jan. 2, 1971, 84 Stat. 1891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

CHAPTER 85—PRISON-MADE GOODS

Sec.
1761. Transportation or importation.
1762. Marking packages.

§ 1761. Transportation or importation

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State.

(June 25, 1948, ch. 645, 62 Stat. 785.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 396a, 396b (July 24, 1935, ch. 412, § 1, 49 Stat. 494; Oct. 14, 1940, ch. 872, 54 Stat. 1134; July 9, 1941, ch. 283, 55 Stat. 581).

Section consolidates sections 396a and 396b of title 18, U.S.C., 1940 ed. Each section related to the same subject matter and defined the same offense. Section 396a of title 18, U.S.C., 1940 ed., was enacted later and superseded section 396b of title 18, U.S.C., 1940 ed.

Reference to persons aiding, causing or assisting was omitted. Such persons are principals under section 2 of this title.

Reference to states, territories, specific places, etc., were omitted. This was made possible by insertion of words "interstate commerce or from any foreign country into the United States," and by definitive section 10 of this title.

Subsection (b) was rewritten to eliminate ambiguity and uncertainty by expressly making the exceptive language apply to the entire chapter and by permitting State institutions to manufacture goods for the Federal Government and the District of Columbia and vice versa. In such subsections, the words "penal and correctional" and "penal or correctional," preceding "institutions" and "institution," respectively, were omitted as surplusage.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Divesting prison-made goods of interstate character, see section 60 of Title 49, Transportation.

Forfeiture of goods, see section 1762 of this title.

Jurisidiction and venue of offenses begun in one district and completed in another, see section 3237 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1762 of this title.

§ 1762. Marking packages

(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

(b) Whoever violates this section shall be fined not more than $1,000, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

(June 25, 1948, ch. 645, 62 Stat. 786.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 396c, 396d, 396e (July 24, 1935, ch. 412, §§ 2, 3, 4, 49 Stat. 494, 495).

Section consolidates sections 396c, 396d, and 396e of title 18, U.S.C., 1940 ed.

Words "upon conviction thereof" were deleted as unnecessary, since punishment cannot be imposed until after conviction.

Words "transported in violation of this section or section 1761" were added after the word "merchandise" to continue existing law.

The provisions of said section 396e of title 18, U.S.C., 1940 ed., relating to venue, were omitted as covered by section 3237 of this title.

Minor changes were made in translations and phraseology.

CROSS REFERENCES

Divesting prison made goods of interstate character, see section 60 of Title 49, Transportation.

Jurisdiction and venue of offenses begun in one district and completed in another, see section 3237 of this title.

CHAPTER 87—PRISONS

Sec.
1791. Traffic in contraband articles.
1792. Mutiny, riot, dangerous instrumentalities prohibited.

CROSS REFERENCES

Escape and rescue, see section 751 et seq. of this title.

§ 1791. Traffic in contraband articles

Whoever, contrary to any rule or regulation promulgated by the Attorney General, introduces or attempts to introduce into or upon the grounds of any Federal penal or correctional institution or takes or attempts to take or send therefrom anything whatsoever, shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 786.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753j, 908 (May 14, 1930, ch. 274, § 11, 46 Stat. 327; May 27, 1930, ch. 339, § 8, 46 Stat. 390).

Section consolidates sections 753j and 908 of title 18, U.S.C., 1940 ed. The section was broadened to include the taking or sending out of contraband from the institution. This was suggested by representatives of the Federal Bureau of Prisons and the Criminal Division of the Department of Justice. In other respects the section was rewritten without change of substance.

The words "narcotic", "drug", "weapon" and "contraband" were omitted, since the insertion of the words "contrary to any rule or regulation promulgated by the attorney general" preserves the intent of the original statutes.

Words "guilty of a felony" were deleted as unnecessary in view of definitive section 1 of this title. (See also reviser's note under section 550 of this title.)

Minor verbal changes also were made.

CROSS REFERENCES

Bureau of Prisons employees, power to arrest without warrant for violations of this section, see section 3050 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3050 of this title.

§ 1792. Mutiny, riot, dangerous instrumentalities prohibited

Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional institution, or without the knowledge or consent of the warden or superintendent, conveys into such institution, or from place to place therein any tool, device, or substance designed to cut, abrade, or destroy the materials, or any part thereof, of which any building of such institution is constructed, or any other substance or thing designed to injure or destroy any building, or any part thereof, of such institution; or

Whoever conveys into such institution, or from place to place therein, any firearm, weapon, explosive, or any lethal or poisonous gas, or any other substance or thing designed to kill, injure, or disable any officer, agent, employee, or inmate thereof, or conspires so to do—

Shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 786.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 252 (May 18, 1934, ch. 303, § 1, 48 Stat. 782).

Escape provisions of this section were incorporated in section 752 of this title.

Reference to persons causing, procuring, aiding and assisting was omitted. Such persons are principals under section 2 of this title.

Minor changes were made in translation and phraseology.

CROSS REFERENCES

Bureau of Prisons employees, power to arrest without warrant for violations of this section, see section 3050 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3050 of this title.

CHAPTER 89—PROFESSIONS AND OCCUPATIONS

Sec.
1821. Transportation of dentures.

§ 1821. Transportation of dentures

Whoever transports by mail or otherwise to or within the District of Columbia, the Canal Zone or any Possession of the United States or uses the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory any set of artificial teeth or prosthetic dental appliance or other denture, constructed from any cast or impression made by any person other than, or without the authorization or prescription of, a person licensed to practice dentistry under the laws of the place into which such denture is sent or brought, where such laws prohibit:

(1) the taking of impressions or casts of the human mouth or teeth by a person not licensed under such laws to practice dentistry;

(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under such laws to practice dentistry; or

(3) the construction or supply of dentures from impressions or casts made by a person not licensed under such laws to practice dentistry—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 786.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 420f, 420g, and 420h (Dec. 24, 1942, ch. 823, §§ 1, 2, 3, 56 Stat. 1087).

This section consolidates the offense, penalty, and definitive provisions of sections 420f, 420g, and 420h of title 18, U.S.C., 1940 ed., as subsections (a) and (b).

The definition of "denture" was omitted as unnecessary in view of the phraseology of the revised section, the context of which makes clear the meaning of dentures referred to.

The definition of "Territory" was omitted as unnecessary. The revised section makes clear the places included in the application of the section without the use of definitions.

The definition of "Interstate Commerce" was likewise omitted as unnecessary in view of definition of interstate commerce in section 10 of this title.

Changes of phraseology and arrangement were made, but without change of substance.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction and venue of offenses begun in one district and completed in another, see section 3237 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 91—PUBLIC LANDS

Sec.
1851. Coal depredations.
1852. Timber removed or transported.
1853. Trees cut or injured.
1854. Trees boxed for pitch or turpentine.
1855. Timber set afire.

Sec.
1856. Fires left unattended and unextinguished.
1857. Fences destroyed; livestock entering.
1858. Survey marks destroyed or removed.
1859. Surveys interrupted.
1860. Bids at land sales.
1861. Deception of prospective purchasers.
1862. Trespass on Bull Run National Forest.
1863. Trespass on national forest lands.

AMENDMENTS

1949—Act May 24, 1949, ch. 139, § 41, 63 Stat. 95, substituted in analysis "1859" for "1959", and added item "1863. Trespass on national forest lands.".

§ 1851. Coal depredations

Whoever mines or removes coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of, or reserved to the United States, with intent wrongfully to appropriate, sell, or dispose of the same, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not interfere with any right or privilege conferred by existing laws of the United States.

(June 25, 1948, ch. 645, 62 Stat. 787.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 103a, 103b (July 3, 1926, ch. 780, §§ 1, 2, 44 Stat. 891).

Section consolidates sections 103a and 103b of title 18, U.S.C., 1940 ed.

Words "deemed guilty of misdemeanor" were deleted as unnecessary in view of definitive section 1 of this title. (See also reviser's note under section 212 of this title.)

Minor changes were made in phraseology.

CROSS REFERENCES

Entry on coal lands in general, see section 71 et seq. of Title 30, Mineral Lands and Mining.

Entry under nonmineral land laws of coal lands with reservation of coal to United States, see section 81 et seq. of Title 30.

Lease of mineral deposits within acquired lands, see section 351 et seq. of Title 30.

Leases and prospecting permits on lands containing coal, see sections 181 et seq., 201 et seq., of Title 30.

§ 1852. Timber removed or transported

Whoever cuts, or wantonly destroys any timber growing on the public lands of the United States; or

Whoever removes any timber from said public lands, with intent to export or to dispose of the same; or

Whoever, being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber so cut or removed from said lands, or lumber manufactured therefrom—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; nor shall it interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

(June 25, 1948, ch. 645, 62 Stat. 787.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 103 (Mar. 4, 1909, ch. 321, § 49, 35 Stat. 1098).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "motor vehicle or aircraft" were inserted in third paragraph to remove any doubt as to scope of section in view of rapidly advancing methods of transportation.

Minor changes were made in phraseology.

CROSS REFERENCES

Cutting, destroying, or removing timber—
Crater Lake National Park, see section 123 of Title 16, Conservation.
Glacier National Park, see sections 162, 162a, and 167 of Title 16.
Indian lands, removal from, see section 196 of Title 25, Indians.
Mineral lands, see sections 604 to 606 of Title 16, Conservation.
National parks in general, see section 3 of Title 16.
Notice of unlawful cutting, see section 605 of Title 16.
Penalty for unlawful cutting, see section 606 of Title 16.
Permits to cut for agricultural, mining or domestic purposes, see sections 45c, 604, 607 to 613 of Title 16.
Purpose of cutting, effect on criminality of act, see section 607 of Title 16.
Transferee of functions of register and receiver of local land office as required to ascertain legality of cutting or use, see section 605 of Title 16.
Yellowstone National Park, see section 38 of Title 16.
Yosemite National Park, regulations, see section 53 of Title 16.

Seizure of timber exported from Territories of United States, see section 602 of Title 16.

Transportation of timber produced by railroad not forbidden, see section 1 of Title 49, Transportation.

§ 1853. Trees cut or injured

Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 787.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 104 (Mar. 4, 1909, ch. 321, § 50, 35 Stat. 1098; June 25, 1910, ch. 431, § 6, 36 Stat. 857).

Reference to persons aiding or procuring was deleted as unnecessary since such persons are made principals by section 2 of this title.

Maximum fine was increased from $500 to $1,000 to conform to other comparable sections of this chapter. (See sections 1851 and 1852 of this title.)

Minor changes were also made in phraseology.

CROSS REFERENCES

General provisions relating to Indian lands and reservations, see Title 25, Indians.

Protection of national forests and violation of rules and regulations relating thereto, see section 551 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 552d.

§ 1854. Trees boxed for pitch or turpentine

Whoever cuts, chips, chops, or boxes any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance; or

Whoever buys, trades for, or in any manner acquires any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, with knowledge that the same has been so unlawfully obtained—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 788.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 105 (Mar. 4, 1909, ch. 321, § 51, 35 Stat. 1098).

Reference to persons aiding, encouraging, or causing was deleted as unnecessary since such persons are made principals by section 2 of this title.

Maximum fine was increased from $500 to $1,000 to conform to other comparable sections of this chapter. (See sections 1851 and 1852 of this title.)

Minor changes also were made in phraseology.

§ 1855. Timber set afire

Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment.

(June 25, 1948, ch. 645, 62 Stat. 788.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 106 (Mar. 4, 1909, ch. 321, § 52, 35 Stat. 1098; Nov. 15, 1941, ch. 472, § 1, 55 Stat. 763).

Surplus verbiage and unnecessary enumerations were omitted.

Words "without authority" were inserted near beginning of section so as to remove any doubt as to scope or meaning of section.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor verbal changes were made.

CROSS REFERENCES

Disposition of fines, see section 3613 of this title.

Protection against fires, see section 594 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3613 of this title.

§ 1856. Fires left unattended and unextinguished

Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 788.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 107 (Mar. 4, 1909, ch. 321, § 53, 35 Stat. 1908; June 25, 1910, ch. 431, § 6, 36 Stat. 857; Nov. 15, 1941, ch. 472, § 2, 55 Stat. 764).

Words "without hard labor" which followed "six months" and preceded "or both" were omitted as unnecessary. (See reviser's note under section 1 of this title.)

Enumeration of applicable condemnation statutes was deleted and section extended and made applicable to all lands in process of condemnation by the government. This does no violence to the intent of Congress and clarifies the section considerably.

Other changes in phraseology were made.

CROSS REFERENCES

Disposition of fines, see section 3613 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3613 of this title.

§ 1857. Fences destroyed; livestock entering

Whoever knowingly and unlawfully breaks, opens, or destroys any gate, fence, hedge, or wall inclosing any lands of the United States reserved or purchased for any public use; or

Whoever drives any cattle, horses, hogs, or other livestock upon any such lands for the purposes of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or

Whoever knowingly permits his cattle, horses, hogs, or other livestock to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other livestock may or can destroy the grass

or trees or other property of the United States on the said lands—

Shall be fined not more than $500 or imprisoned not more than one year, or both.

This section shall not apply to unreserved public lands.

(June 25, 1948, ch. 645, 62 Stat. 788.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 111 (Mar. 4, 1909, ch. 321, § 56, 35 Stat. 1099).

Minor changes were made in phraseology.

CROSS REFERENCES

Driving stock to feed on Indian lands, see section 179 of Title 25, Indians.

Grazing lands, see section 315 et seq. of Title 43, Public Lands.

Provisions relating to fences and grazing generally, see Title 16, Conservation.

§ 1858. Survey marks destroyed or removed

Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quartersection corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined not more than $250 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 789.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 111 (Mar. 4, 1909, ch. 321, § 57, 35 Stat. 1099).

Minor changes were made in phraseology.

CROSS REFERENCES

Survey of public lands, see section 751 et seq. of Title 43, Public Lands.

§ 1859. Surveys interrupted

Whoever, by threats or force, interrupts, hinders, or prevents the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same in conformity with the instructions of the Director of the Bureau of Land Management, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 789; May 24, 1949, ch. 139, § 42, 63 Stat. 95.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 112 (Mar. 4, 1909, ch. 321, § 58, 35 Stat. 1099).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

1949 ACT

This section [section 42] substitutes, in section 1859 of title 18, U.S.C., "Director of the Bureau of Land Management" for "Commissioner of the General Land Office," in view of the abolishment of the General Land Office, and the office of Commissioner thereof, by 1946 Reorganization Plan No. 3, § 403, effective July 16, 1946 (11 F.R. 7876). Such plan consolidated the functions of the General Land Office and of the Grazing Service to form a new agency, the Bureau of Land Management, in the Department of the Interior and headed by a Director.

AMENDMENTS

1949—Act May 24, 1949, substituted "Director of the Bureau of Land Management" for "Commissioner of the General Land Office".

§ 1860. Bids at land sales

Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or

Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 789.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 113 (Mar. 4, 1909, ch. 321, § 59, 35 Stat. 1099).

Imprisonment provision was reduced from "two years" to "one year," thus placing the offense in the category of misdemeanors which may be prosecuted on information. The lesser punishment seems adequate.

Minor changes were made in phraseology and arrangement.

§ 1861. Deception of prospective purchasers

Whoever, for a reward paid or promised to him in that behalf, undertakes to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who willfully and falsely represents to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, falsely represents to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be fined not more than $300 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 789.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 114 (Feb. 23, 1917, ch. 115, 39 Stat. 936).

Words "deemed guilty of a misdemeanor and" which preceded "punished" were omitted as unnecessary in view of definitive section 1 of this title.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The public-land laws, referred to in text, are classified generally to Title 43, Public Lands.

§ 1862. Trespass on Bull Run National Forest

Whoever knowingly trespasses upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or unlawfully enters thereon for the purpose of grazing stock, or engages in grazing stock thereon, or permits stock of any kind to graze thereon, shall be fined not more than $500 or imprisoned not more than six months, or both.

This section shall not apply to forest rangers and other persons employed by the United States to protect the forest, or to Federal and State officers and employees of the water board of the City of Portland, State of Oregon, in the discharge of their duties.

(June 25, 1948, ch. 645, 62 Stat. 789.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 109 (Mar. 4, 1909, ch. 321, § 55, 35 Stat. 1099).

The phrase "or enters thereon for the purpose of grazing stock" etc., was qualified by the adjective "unlawfully" to make it clear that grazing permit holders are exempted.

Changes were made in phraseology and arrangement, but without change of substance.

§ 1863. Trespass on national forest lands

Whoever, without lawful authority or permission, goes upon any national-forest land while it is closed to the public pursuant to lawful regulation of the Secretary of Agriculture, shall be fined not more than $500 or imprisoned not more than six months, or both.

(Added May 24, 1949, ch. 139, § 43, 63 Stat. 95.)

Historical and Revision Notes

This section [section 43] incorporates in revised title 18, U.S.C., as section 1863 thereof, and with changes in phraseology, the provisions of act of February 10, 1948 (ch. 51, 62 Stat. 19), which was not incorporated in title 18 when the revision was enacted. The phrase "without hard labor" is omitted from the punishment clause as unnecessary, in conformity with the uniform style of such title. (See reviser's note to sec. 1 of such revised title, appearing in H. Rept. No. 304, April 24, 1947, to accompany H.R. 3190, 80th Cong. (pp. A2, A4 of such report).) The concluding proviso that "nothing herein shall be construed to limit the authority of the Secretary of Agriculture under other law to otherwise provide for regulating the occupancy and use of national-forest lands and lands administered by the Forest Service", is omitted as surplusage.

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

Sec.
1901. Collecting or disbursing officer trading in public property.
1902. Disclosure of crop information and speculation thereon.
1903. Speculation in stocks or commodities affecting crop insurance.
1904. Disclosure of information or speculation in securities affecting Reconstruction Finance Corporation.
1905. Disclosure of confidential information generally.
1906. Disclosure of information by bank examiner.
1907. Disclosure of information by farm credit examiner.
1908. Disclosure of information by National Agricultural Credit Corporation examiner.
1909. Examiner performing other services.
1910. Nepotism in appointment of receiver or trustee.
1911. Receiver mismanaging property.
1912. Unauthorized fees for inspection of vessels.
1913. Lobbying with appropriated moneys.
1914.[1] Salary of Government officials and employees payable only by United States.
1915. Compromise of customs liabilities.
1916. Unauthorized employment and disposition of lapsed appropriations.
1917. Interference with civil service examinations.
1918. Disloyalty and asserting the right to strike against the Government.
1919. False statement to obtain unemployment compensation for Federal service.
1920. False statement to obtain Federal employees' compensation.
1921. Receiving Federal employees' compensation after marriage.
1922. False or withheld report concerning Federal employees' compensation.
1923. Fraudulent receipt of payments of missing persons.

Amendments

1966—Pub. L. 89-554, § 3(c), Sept. 6, 1966, 80 Stat. 608, added items 1916 to 1923.

Cross References

Bribery and graft, see section 201 et seq. of this title.

Embezzlement and theft, see section 641 et seq. of this title.

Government employee having interest in Indian contracts, see section 437 of this title.

Officers—

Interested in claims against Government, see section 205 of this title.

Receiving compensation in matters relating to proceedings, contracts, claims, etc., see section 203 of this title.

Postal employee having interest in mail contract, see section 440 of this title.

Prosecution of claims for supplies for armed forces, see section 205 of this title.

Purchase of claims for fees by court officials, see section 291 of this title.

§ 1901. Collecting or disbursing officer trading in public property

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than $3,000 or imprisoned not more than one year, or both; and shall be removed from office, and be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 790.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 192 (Mar. 4, 1909, ch. 321, § 103, 35 Stat. 1107).

Minor changes were made in phraseology.

Cross References

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 2071, 2381, 2385, and 2387 of this title.

Section Referred to in Other Sections

This section is referred to in title 26 section 7214.

[1] Section repealed without amending analysis to reflect such repeal.

§ 1902. Disclosure of crop information and speculation thereon

Whoever, being an officer, employee or person acting for or on behalf of the United States or any department or agency thereof, and having by virtue of his office, employment or position, become possessed of information which might influence or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of such department or agency required to be withheld from publication until a fixed time, willfully imparts, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or agency to receive the same; or, before such information is made public through regular official channels, directly or indirectly speculates in any such product by buying or selling the same in any quantity, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

No person shall be deemed guilty of a violation of any such rules, unless prior to such alleged violation he shall have had actual knowledge thereof.

(June 25, 1948, ch. 645, 62 Stat. 790.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 214 (Mar. 4, 1909, ch. 321, § 123, 35 Stat. 1110).

Words "agency thereof" were inserted in lieu of "office thereof" at beginning of section in conformity with section 6 of this title.

Minor changes were made in phraseology.

§ 1903. Speculation in stocks or commodities affecting crop insurance

Whoever, while acting in any official capacity in the administration of any Act of Congress relating to crop insurance or to the Federal Crop Insurance Corporation speculates in any agricultural commodity or product thereof, to which such enactments apply, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 790.)

Historical and Revision Notes

Based on section 1514(b) of title 7, U.S.C., 1940 ed., Agriculture (Feb. 16, 1938, ch. 30, title V, § 514(b), 52 Stat. 76).

Words "upon conviction thereof" were omitted as surplusage since punishment can be imposed only after a conviction.

Minor changes were made in phraseology and translations.

§ 1904. Disclosure of information or speculation in securities affecting Reconstruction Finance Corporation

Whoever, being connected in any capacity with the Reconstruction Finance Corporation, gives any unauthorized information concerning any future action or plan of the said Corporation which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly in the securities or property of any company, bank, or corporation receiving loans or other assistance from the said Corporation, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 791.)

Historical and Revision Notes

Based on section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Jan. 22, 1932, ch. 8, § 16(c), 47 Stat. 11, 12).

Minor changes were made in translations and phraseology.

Abolition of Reconstruction Finance Corporation

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(June 25, 1948, ch. 645, 62 Stat. 791.)

Historical and Revision Notes

Based on section 176b of title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of title 18, U.S.C., 1940 ed.; section 1335 of title 19, U.S.C., 1940 ed., Customs Duties (R.S. § 3167; Aug. 27, 1894, ch. 349, § 24, 28 Stat. 557; Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 117; June 17, 1930, ch. 497, title III, § 335, 46 Stat. 701; Jan. 27, 1938, ch. 11, § 2, 52 Stat. 8).

Section consolidates section 176b of title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of title 18, U.S.C., 1940 ed., and section 1335 of title 19, U.S.C., 1940 ed., Customs Duties.

Words "or of any department or agency thereof" and words "such department or agency" were inserted so as to eliminate any possible ambiguity as to scope of section. (See definition of "department" and "agency" in section 6 of this title.)

References to the offenses as misdemeanors, contained in all of said sections, were omitted in view of definitive section 1 of this title.

The provisions of section 216 of title 18, U.S.C., 1940 ed., relating to publication of income tax data by "any person", were omitted as covered by section 55(f)(1) of title 26, U.S.C., 1940 ed., Internal Revenue Code.

Minor changes were made in translations and phraseology.

CROSS REFERENCES

Disclosure of income information by shareholders, see section 7213 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 15 sections 330b, 771, 773, 796, 1193, 1401, 1418, 1914, 1944, 1990d, 2055, 2217, 2613; title 26 section 7213; title 29 section 664; title 33 sections 1318, 1320, 1322, 1369, 1513; title 42 sections 263g, 263i, 300j–4, 1857c–9, 1857d, 1857f–6, 1857h–5, 4912, 5916; title 46 section 1463; title 49 section 1905.

§ 1906. Disclosure of information by bank examiner

Whoever, being an examiner, public or private, discloses the names of borrowers or the collateral for loans of any member bank of the Federal Reserve System, or bank insured by the Federal Deposit Insurance Corporation, examined by him, to other than the proper officers of such bank, without first having obtained the express permission in writing from the Comptroller of the Currency as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 791.)

HISTORICAL AND REVISION NOTES

Based on section 594 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22 [second and third sentences of second paragraph], 38 Stat. 272, 273; Sept. 26, 1918, ch. 177, § 5 [22(b), second paragraph], 40 Stat. 970; Aug. 23, 1935, ch. 614, § 326(b), 49 Stat. 716).

Other provisions of section 594 of title 12, U.S.C., 1940 ed., Banks and Banking, were consolidated with similar provisions from other sections, to form section 1909 of this title.

Changes were made in phraseology.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26, of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System, for violating or permitting violation of this section, see section 503 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 503.

§ 1907. Disclosure of information by farm credit examiner

Whoever, being a farm credit examiner or any examiner, public or private, discloses the names of borrowers of any Federal land bank association, Federal land bank, or joint-stock land bank, or any organization examined by him under the provisions of law relating to Federal intermediate credit banks, to other than the proper officers of such institution or organization, without first having obtained express permission in writing from the Land Bank Commissioner or from the board of directors of such institution or organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as a farm credit examiner.

(June 25, 1948, ch. 645, 62 Stat. 791; Aug. 18, 1959, Pub. L. 86–168, title I, § 104(h), 73 Stat. 387.)

HISTORICAL AND REVISION NOTES

Based on sections 983 and 1124 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31 [third and fourth sentences of third paragraph], 39 Stat. 383; July 17, 1916, ch. 245, § 211(d) [part of first sentence], as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; June 16, 1933, ch. 98, § 80(a), 48 Stat. 273).

Section 983 of title 12, U.S.C., 1940 ed., Banks and Banking, does not include the term "farm credit examiner," as used in this section, but it relates thereto as is indicated by sections 951 and 952 of said title.

Section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, which was taken from a chapter in that title dealing with Federal intermediate credit banks, also relates to farm credit examiners as is indicated by section 1093 thereof. Even so, it was deemed advisable to retain the reference to any examiner "public or private," as used in said section 1124.

For clarification, the types of associations, banks, and organizations to which section relates, were enumerated wherever referred to, and words "examined by him under the provisions of law relating to Federal intermediate credit banks" were inserted.

In addition, changes were made in phraseology.

The provisions relating to disqualification from holding office as an incident to violation were contained in section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking.

For bribery and other provisions of section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, see sections 218 and 1909 of this title.

Other provisions of said section 983 of title 12, U.S.C., 1940 ed., were incorporated in section 221 of this title.

AMENDMENTS

1959—Pub. L. 86–168 substituted "Federal land bank associations" for "national farm loan association".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86–168, set out as an Effective Date of 1959 Amendment note under former section 751 of Title 12, Banks and Banking.

ABOLISHMENT OF OFFICE OF LAND BANK COMMISSIONER

The office of Land Bank Commissioner was abolished by section 636f of Title 12, Banks and Banking.

CROSS REFERENCES

Secret Service, detection, arrest and delivery into custody of any person violating this section in so far as the Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 1908. Disclosure of information by National Agricultural Credit Corporation examiner

Whoever, being an examiner appointed under the provisions of law relating to National Agricultural Credit Corporations, discloses the names of borrowers of any organization examined by him, to other than the proper officers of such organization, without first having obtained express permission in writing from the Comptroller of the Currency or from the board of directors of such organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as such examiner.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based on section 1314 of title 12, U.S.C., 1940 ed., Banks and Banking (Mar. 4, 1923, ch. 252, title II, § 216(d), 42 Stat. 1472).

Minor changes of phraseology were made.

Other provisions of section 1314 of title 12, U.S.C., 1940 ed., Banks and Banking, are incorporated in sections 218 and 1909 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26, of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

§ 1909. Examiner performing other services

Whoever, being a national-bank examiner, Federal Deposit Insurance Corporation examiner, farm credit examiner, or an examiner of National Agricultural Credit Corporations, performs any other service, for compensation, for any bank or banking or loan association, or for any officer, director, or employee thereof, or for any person connected therewith in any capacity, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based on sections 594, 656a, 952, 981, 1093, 1124, 1243, and 1314 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, fourth sentence of first paragraph, and third sentence of second paragraph, 38 Stat. 272; July 17, 1916, ch. 245, §§ 28, 31 [third sentence of first paragraph], 39 Stat. 381, 383; July 17, 1916, ch. 245, §§ 208(c), 211(d), second sentence, as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1459, 1460; Sept. 26, 1918, ch. 177, § 5 ["22(b)"] 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, §§ 209(c), 216(d) [second sentence], 42 Stat. 1468, 1472; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, § 80(a), 48 Stat. 273; Aug. 23, 1935, ch. 614, § 326(b), 49 Stat. 716; Aug. 19, 1937, ch. 704, § 20, 50 Stat. 710).

Section 594 of title 12, U.S.C., 1940 ed., Banks and Banking, first paragraph, related to national-bank examiners and Federal Deposit Insurance Corporation examiners, and provided punishment for several offenses including the offense of performing services, for compensation, other than their regular duties. Section 656a of said title 12 is authority for the designation "farm credit examiner" included in this section, and section 1093 of said title authorizes farm credit examiners to conduct examinations in connection with contemplated transactions of Federal intermediate credit banks, to which section 1124 of said title relates.

Sections 981 and 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, which relate to farm credit examiners, and section 1314 of said title, which relates to National Agricultural Credit Corporation examiners, all prohibit the performance of services, for compensation, other than regular duties. They do not specifically provide punishment for violation of such prohibition, but the provisions of said section 594 of said title, relating to national-bank examiners and Federal Deposit Insurance Corporation examiners, which does provide punishment for the same offense, are extended to the former two types of examiners by sections 952 and 1243 thereof.

The remaining provisions of sections 594, 981, 1124, and 1314 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to unlawful disclosure of the names of borrowers or the collateral for loans, false statements in applications for loans, overvaluation of securities, and acceptance of loans or gratuities, were separated and transferred according to subject matter to sections 218, 1014, 1906-1908 of this title, where, insofar as possible, they were consolidated with similar provisions from other sections.

Minor changes were made in phraseology.

NATIONAL AGRICULTURAL CREDIT CORPORATION

Title II of the Agricultural Credits Act, act Mar. 4, 1923, ch. 252, title II, §§ 201 to 217, 42 Stat. 1461, which authorized the creation of national agricultural credit corporations, was repealed by Pub. L. 86-230, Sept. 8, 1959, § 24, 73 Stat. 466. Prior to such repeal, act June 16, 1933, ch. 101, § 77, 48 Stat. 292, had prohibited the creation, after June 16, 1933, of national agricultural credit corporations authorized to be formed under the Agricultural Credits Act.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System, for violating or permitting violation of this section, see section 503 of Title 12, Banks and Banking.

Secret Service, detection, arrest and delivery into custody of any person violating this section in so far as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and national farm loan associations are concerned, see section 3056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title; title 12 section 503.

§ 1910. Nepotism in appointment of receiver or trustee

Whoever, being a judge of any court of the United States, appoints as receiver, or trustee, any person related to such judge by consanguinity, or affinity, within the fourth degree—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based on section 531 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Aug. 25, 1937, ch. 777, 50 Stat. 810).

Minor changes were made in phraseology.

§ 1911. Receiver mismanaging property

Whoever, being a receiver, trustee, or manager in possession of any property in any cause pending in any court of the United States, willfully fails to manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof, shall be fined not more than $3,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based upon section 124 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 65, 36 Stat. 1104).

Word "trustee" was inserted after "receiver" so as to make it clear that persons holding such office are included in the enumeration of court officers who are subject to the provisions of this section.

Changes were made in phraseology and arrangement, but without change of substance or meaning.

Other provisions of section 124 of title 28, U.S.C., 1940 ed., were retained in that title.

CROSS REFERENCES

Bribery, generally, see section 201 et seq. of this title.

Civil actions against trustees and receivers, see section 959 of Title 28, Judiciary and Judicial Procedure.

Embezzlement, see section 645 of this title.

Fee agreements, punishment, see section 155 of this title.

Investigation of violation of laws, see section 3057 of this title.

Management of property by trustees and receivers according to State laws, see section 959 of Title 28, Judiciary and Judicial Procedure.

National banks, embezzlement or misapplication of funds, see section 656 of this title.

§ 1912. Unauthorized fees for inspection of vessels

Whoever, being an officer, employee, or agent of the United States or any agency thereof, engaged in inspection of vessels, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall be fined not more than $500 or imprisoned not more than six months, or both; and shall forfeit his office.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 196 (Mar. 4, 1909, ch. 321, § 107, 35 Stat. 1107).

The phrase "officer or employee of the United States or any agency thereof" was substituted for the phrase "inspector of steamboats" in view of 1946 Reorganization Plan No. 3, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, abolishing inspectors and transferring their functions to the Coast Guard.

Minor changes were made in phraseology.

CROSS REFERENCES

Commandant of the Coast Guard to perform functions pertaining to inspection of vessels, see note set out under former section 1 of Title 46, Shipping.

Inspection of steam vessels, see section 361 et seq. of Title 46.

§ 1913. Lobbying with appropriated moneys

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

(June 25, 1948, ch. 645, 62 Stat. 792.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 201 (July 11, 1919, ch. 6, § 6, 41 Stat. 68).

Reference to "department" and "agency" was added in three instances after the words "United States" to remove doubt as to the scope of the section. (See definitions of "department" and "agency" in section 6 of this title.)

Reference to the offense as a misdemeanor was omitted as unnecessary in view of the definitive section 1 of this title.

Words "on conviction thereof" were omitted as surplusage since punishment can be imposed only after conviction.

Minor changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374.

[§ 1914. Repealed. Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, act June 25, 1948, ch. 645, 62 Stat. 793, related to salary of government officials and employees payable only by United States, and is supplanted by section 209 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as an Effective Date note under section 201 of this title.

EXEMPTIONS

Exemptions from the provisions of this section heretofore created or authorized by statute which are in force on the effective date of the repeal of this section deemed to be exemptions from section 209 of this title

except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable, see section 2 of Pub. L. 87-849, set out as an Exemptions note under former section 281 of this title.

§ 1915. Compromise of customs liabilities

Whoever, being an officer of the United States, without lawful authority compromises or abates or attempts to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty or forfeiture, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise or baggage therefrom, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 793.)

HISTORICAL AND REVISION NOTES

Based on section 1616 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 616, 46 Stat. 757).

Designation of the offense as a felony was omitted as unnecessary in view of definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Words "and upon conviction thereof" were also omitted as unnecessary, since punishment could not be imposed until after conviction.

Changes were made in phraseology.

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to Title 19, Customs Duties.

§ 1916. Unauthorized employment and disposition of lapsed appropriations

Whoever—

(1) violates the provision of section 3103 of title 5 that an individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid; or

(2) violates the provision of section 5501 of title 5 that money accruing from lapsed salaries or from unused appropriations for salaries shall be covered into the Treasury of the United States;

shall be fined not more than $1,000 or imprisoned not more than one year.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 608.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 47 (less so much as relates to removal)	Aug. 23, 1912, ch. 350, § 5 (less so much as relates to removal), 37 Stat. 414.
.....	5 U.S.C. 50 (2d sentence, less so much as relates to removal)	

The statement of the acts prohibited is supplied from section 4 of the Act of Aug. 5, 1882, ch. 389, 22 Stat. 255, as amended June 22, 1906, ch. 3514, §§ 6, 8, 34 Stat. 449, and Sept. 23, 1950, ch. 1010, § 7, 64 Stat. 986, which is codified in sections 3103 and 5501 of title 5, United States Code.

The words "upon conviction thereof" are omitted as unnecessary because punishment can be imposed only after conviction.

§ 1917. Interference with civil service examinations

Whoever, being a member or employee of the United States Civil Service Commission or an individual in the public service, willfully and corruptly—

(1) defeats, deceives, or obstructs an individual in respect of his right of examination according to the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by the Commission under section 1302(a) of title 5;

(2) falsely marks, grades, estimates, or reports on the examination or proper standing of an individual examined;

(3) makes a false representation concerning the mark, grade, estimate, or report on the examination or proper standing of an individual examined, or concerning the individual examined; or

(4) furnishes to an individual any special or secret information for the purpose of improving or injuring the prospects or chances of an individual examined, or to be examined, being appointed, employed, or promoted;

shall, for each offense, be fined not less than $100 nor more than $1,000 or imprisoned not less than ten days nor more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 609.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 637	Jan. 16, 1883, ch. 27, § 5, 22 Stat. 405.

The section is rewritten to conform to the style of title 18. The words "a member or employee of the United States Civil Service Commission" are coextensive with and substituted for "Civil Service Commissioner, examiner, copyist, or messenger".

The references to actions in concert with others to violate this section are omitted in view of the crime of conspiracy contained in chapter 19 of title 18.

In paragraph (1), the words "the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by the Commission under section 1302(a) of title 5" are substituted for "any such rules or regulations" to provide the basis of reference.

The words "be deemed guilty of a misdemeanor" are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words "and upon conviction thereof" are omitted as unnecessary because punishment can be imposed only after conviction.

The words "or both" are substituted for "or by both such fine and imprisonment".

§ 1918. Disloyalty and asserting the right to strike against the Government

Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia;

shall be fined not more than $1,000 or imprisoned not more than one year and a day, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 609.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118r	Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625.
	[Uncodified]	June 29, 1956, ch. 479, § 3 (as applicable to the Act of Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625), 70 Stat. 453.

The section is rewritten to conform to the style of title 18. The statement of the acts prohibited is supplied from the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624, which is codified in section 7311 of title 5, United States Code.

The words "From and after July 1, 1956", appearing in the Act of June 29, 1956, are omitted as executed.

The words "shall be guilty of a felony" are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under section 550 of this title.)

§ 1919. False statement to obtain unemployment compensation for Federal service

Whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5 or under an agreement thereunder, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 609.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1368(a)	Sept. 1, 1954, ch. 1212, § 4(a) "Sec. 1508(a)", 68 Stat. 1135.

The words "under chapter 85 of title 5" are substituted for "under this title" (Title XV of the Social Security Act, as amended) to reflect the codification of the Title in title 5, United States Code.

§ 1920. False statement to obtain Federal employees' compensation

Whoever makes, in an affidavit or report required by section 8106 of title 5 or in a claim for compensation under subchapter I of chapter 81 of title 5, a statement, knowing it to be false, is guilty of perjury and shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 789	Sept. 7, 1916, ch. 458, § 39, 39 Stat. 749. Oct. 14, 1949, ch. 691, § 103 (b), 63 Stat. 855.

The word "That" in the Act of Sept. 7, 1916, is omitted as unnecessary.

The words "under section 8106 of title 5" are substituted for "under section 754 of this title" to reflect the codification of the section in title 5, United States Code. The words "a claim for compensation under subchapter I of chapter 81 of title 5" are substituted for "any claim for compensation" for clarity.

The words "or both" are substituted for "or by both such fine and imprisonment".

Minor changes in phraseology are made to conform to the style of title 18.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 31-1603, 31-1623 of the District of Columbia Code.

§ 1921. Receiving Federal employees' compensation after marriage

Whoever, being entitled to compensation under sections 8107-8113 and 8133 of title 5 and whose compensation by the terms of those sections stops or is reduced on his marriage or on the marriage of his dependent, accepts after such marriage any compensation or payment to which he is not entitled shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 760(L)	Sept. 7, 1916, ch. 458, § 10(L) 39 Stat. 745. Oct. 14, 1949, ch. 691, § 106(e), 63 Stat. 860.

The word "Whoever" is substituted for "If any person" to conform to the style of title 18.

The words "under sections 8107-8113 and 8133 of title 55" are substituted for "under this section or section 755 or 756 of this title" to reflect the codification of the sections in title 5, United States Code.

The words "or both" are substituted for "or by both such fine and imprisonment".

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 31-1603, 31-1623 of the District of Columbia Code.

§ 1922. False or withheld report concerning Federal employees' compensation

Whoever, being an officer or employee of the United States charged with the responsibility for making the reports of the immediate superior specified by section 8120 of title 5, willfully fails, neglects, or refuses to make any of the reports, or knowingly files a false report, or induces, compels, or directs an injured employee to forego filing of any claim for compensation

or other benefits provided under subchapter I of chapter 81 of title 5 or any extension or application thereof, or willfully retains any notice, report, claim, or paper which is required to be filed under that subchapter or any extension or application thereof, or regulations prescribed thereunder, shall be fined not more than $500 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 774(b)	Sept. 13, 1960, Pub. L. 86-767, § 206, 74 Stat. 908.

The words "the reports of the immediate superior specified in section 8120 of title 5" are substituted for "the reports specified in subsection (a) of this section" to reflect the codification of that subsection in title 5, United States Code.

The words "subchapter I of chapter 81 of title 5" and "that subchapter" are substituted for "sections 751-756, 757-781, 783-791, and 793 of this title" and "said sections", respectively, to reflect the codification of the sections in title 5, United States Code.

The words "shall be guilty of a misdemeanor" are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words "and upon conviction thereof" are omitted as unnecessary because punishment can be imposed only after conviction.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 31-1603, 31-1623 of the District of Columbia Code.

§ 1923. Fraudulent receipt of payments of missing persons

Whoever obtains or receives any money, check, or allotment under—

(1) subchapter VII of chapter 55 of title 5; or

(2) chapter 10 of title 37;

without being entitled thereto, with intent to defraud, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	50A U.S.C. 1008	Mar. 7, 1942, ch. 166, § 8, 56 Stat. 145.

Clauses (1) and (2) are substituted for the words "under this Act" to reflect the codification of the Act. The portion of the Act which is applicable to civilian officers and employees and their dependents is codified in subchapter VII of chapter 55 of title 5, United States Code. The portion of the Act which is applicable to members of the uniformed services and their dependents is codified in chapter 10 of title 37, United States Code.

CHAPTER 95—RACKETEERING

Sec.
1951. Interference with commerce by threats or violence.
1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.
1953. Interstate transportation of wagering paraphernalia.
1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.
1955. Prohibition of illegal gambling businesses.

AMENDMENTS

1970—Pub. L. 91-452, title VIII, § 803(b), Oct. 15, 1970, 84 Stat. 938, added item 1955.

1962—Pub. L. 87-420, § 17(f), Mar. 20, 1962, 76 Stat. 43, added item 1954.

1961—Pub. L. 87-228, § 1(b), Sept. 13, 1961, 75 Stat. 499, added item 1952.

Pub. L. 87-218, § 1, Sept. 13, 1961, 75 Stat. 492, added item 1953.

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

(June 25, 1948, ch. 645, 62 Stat. 793.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 420a-420e-1 (June 18, 1934, ch. 569, §§ 1-6, 48 Stat. 979, 980; July 3, 1946, ch. 537, 60 Stat. 420).

Section consolidates sections 420a to 420e-1 of Title 18, U.S.C., 1940 ed., with changes in phraseology and arrangement necessary to effect consolidation.

Provisions designating offense as felony were omitted as unnecessary in view of definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Subsection (c) of the revised section is derived from title II of the 1946 amendment. It substitutes references to specific sections of the United States Code, 1940 ed., in place of references to numerous acts of

Congress, in conformity to the style of the revision bill. Subsection (c) as rephrased will preclude any construction of implied repeal of the specified acts of Congress codified in the sections enumerated.

The words "attempts or conspires so to do" were substituted for sections 3 and 4 of the 1946 act, omitting as unnecessary the words "participates in an attempt" and the words "or acts in concert with another or with others", in view of section 2 of this title which makes any person who participates in an unlawful enterprise or aids or assists the principal offender, or does anything towards the accomplishment of the crime, a principal himself.

Words "shall, upon conviction thereof," were omitted as surplusage, since punishment cannot be imposed until a conviction is secured.

REFERENCES IN TEXT

Section 101 to 115 of Title 29, referred to in text of subsec. (c), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Tables volume.

Section 11 of that act, formerly classified to section 111 of Title 29, was repealed and reenacted as section 3692 of this title by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 12 of that act, formerly classified to section 112 of Title 29, was also repealed by act June 25, 1948, and is now covered by rule 42(b) of the Federal Rules of Criminal Procedure, set out in Appendix to this title.

Section 164 of Title 45, included within the reference in subsec. (c) to sections 151 to 188 of Title 45, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111, and is now covered by section 5 of Title 41, Public Contracts.

Section 186 of Title 45, included within the reference in subsec. (c) to sections 151 to 188 of Title 45, was omitted.

SHORT TITLE

This section is popularly known as the "Hobbs Act".

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title; title 29 section 1111.

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprise

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or controlled substances (as defined in section 102(6) of the Controlled Substances Act) or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervison of the Secretary of the Treasury.

(Added Pub. L. 87-228, § 1(a), Sept. 13, 1961, 75 Stat. 498, and amended Pub. L. 89-68, July 7, 1965, 79 Stat. 212; Pub. L. 91-513, title II, § 701(i)(2), Oct. 27, 1970, 84 Stat. 1282.)

REFERENCES IN TEXT

Section 102(6) of the Controlled Substances Act, referred to in subsec. (b)(1), is classified to section 802(6) of Title 21, Food and Drugs.

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91-513, § 701(i)(2)(A), inserted "or controlled substances (as defined in section 102(6) of the Controlled Substances Act)".

Subsec. (c). Pub. L. 91-513, § 701(i)(2)(B), struck out reference to investigations involving narcotics.

1965—Subsec. (b)(2). Pub. L. 89-68 made the section applicable to travel in aid of arson.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment of this section by Pub. L. 91-513 not to affect or abate any prosecutions for any violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the former Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, were to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a Savings Provision note under section 321 of Title 21, Food and Drugs.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

§ 1953. Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than $10,000 or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials

used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(Added Pub. L. 87-218, § 1, Sept. 13, 1961, 75 Stat. 492, and amended Pub. L. 93-583, § 3, Jan. 2, 1975, 88 Stat. 1916.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 93-583 added cl. (4).

CROSS REFERENCES

Mailing lottery tickets or related matter, see section 1302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1961 of this title.

§ 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan

Whoever being—

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

receives or agrees to receive or solicts any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined not more than $10,000 or imprisoned not more than three years, or both: *Provided*, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension benefit plan" means any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974, and (b) "employee organization" and "administrator" as defined respectively in sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 87-420, § 17(e), Mar. 20, 1962, 76 Stat. 42, and amended Pub. L. 91-452, title II, § 225, Oct. 15, 1970, 84 Stat. 930; Pub. L. 93-406, title I, § 111(a)(2)(C), Sept. 2, 1974, 88 Stat. 852.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832. Title I of the Employee Retirement Income Security Act of 1974, referred to in text, is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29, and Tables volume.

Section 3(4) of the Employee Retirement Income Security Act of 1974, referred to in text, is classified to section 1002(4) of Title 29.

Section (3)(16) of the Employee Retirement Income Security Act of 1974, referred to in text, probably means section 3(16) of the Employee Retirement Income Security Act of 1974, which is classified to section 1002(16) of Title 29.

AMENDMENTS

1974—Pub. L. 93-406 substituted "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974" for "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended" and "sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974" for "sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended".

1970—Pub. L. 91-452 struck out letter designation "(a)" preceding first sentence and struck out subsec. (b) which related to the immunity from prosecution of any witness compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031 of title 29.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under sections 6001 of this title.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87-420, set out as an Effective Date note under section 664 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out in part as an Effective Date; Savings Provision note under section 6001 of this title.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title; title 29 sections 1031, 1111.

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

(Added Pub. L. 91-452, title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, referred to in subsec. (e), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING

Sections 804 to 809 of Pub. L. 91-452 established the Commission on the Review of the National Policy Toward Gambling, provided for its membership and compensation of the members and the staff, empowered the Commission to subpoena witnesses and grant immunity, required the Commission to make a study of gambling in the United States and existing federal, state, and local policy and practices with respect to prohibition and taxation of gambling activities and to make a final report of its findings and recommendations to the President and to Congress within four years of its establishment, and provided for its termination sixty days after submission of the final report.

PRIORITY OF STATE LAWS

Enactment of this section as not indicating an intent on the part of the Congress to occupy the field in which this section operates to the exclusion of State of local law on the same subject matter, or to relieve any person of any obligation imposed by any State or local law, see section 811 of Pub. L. 91-452, set out as a Priority of State Laws note under section 1511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.
1961. Definitions.
1962. Prohibited racketeering activities.[1]
1963. Criminal penalties.
1964. Civil remedies.

[1] Analysis does not conform to section catchline.

Sec.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

AMENDMENT

1970—Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. (5), is Oct. 15, 1970.

SHORT TITLE

Section 1 of Pub. L. 91-452 provided in part: "That this Act [enacting sections 841 to 848, 1511, 1623, 1955, 1961 to 1968, 3331 to 3334, 3503, 3504, 3575 to 3578, and 6001 to 6005 of this title, and section 1826 of Title 28, Judiciary and Judicial Procedure, amending sections 835, 1073, 1505, 1954, 2424, 2516, 2517, 3148, 3486, and 3500 of this title, sections 15, 87f, 136c, 499m, and 2115 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 49, 77v, 78u, 79r, 80a-41, 80b-9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of

Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, section 161 of Title 29, Labor, section 506 of Title 33, Navigation and Navigable Waters, sections 405 and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, section 1124 of Title 46, Shipping, section 409 of Title 47, Telegraphs, Telephones, and Radio telegraphs, sections 9, 43, 46, 916, 1017, and 1484 of Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and former section 2155 of Title 50, Appendix, repealing sections 837, 895, 1406, and 2514 of this title, sections 32 and 33 of Title 15; sections 4874 and 7493 of Title 26, Internal Revenue Code, section 827 of Title 46, sections 47 and 48 of Title 49, and sections 121 to 144 of Title 50, enacting provisions set out as notes under this section and sections 841, 1511, 1955, preceding 3331, preceding 3481, 3504, and 6001 of this title, and repealing provisions set out as a note under section 2510 of this title] may be cited as the 'Organized Crime Control Act of 1970'."

SEPARABILITY OF PROVISIONS

Section 1301 of Pub. L. 91-452 provided that: "If the provisions of any part of this Act [see Short Title note set out above] or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that:

"The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and othe forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act [see Short Title note above] to seek the eradication of organized crime in the United States by strenghening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDURE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Section 904 of Pub. L. 91-452 provided that:

"(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.

"(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

"(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

"(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

"(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

"(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1963, 1964 of this title.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and

(2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceedings brought by the United States.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1965 of this title.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause action to be expedited in every way.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such persons, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as a racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States

before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

CHAPTER 97—RAILROADS

Sec.

1991. Entering train to commit crime.
1992. Wrecking trains.

Historical and Revision Notes

This chapter does not include motor busses, interstate trucking facilities or airplanes within the protection of existing law. Motor busses and trucks already carry a huge amount of interstate commerce. It is reasonable to presume that much interstate freight and express will soon be carried by air.

Attention is directed to the consideration of the extension of the laws now applicable only to railroads to these other interstate facilities. 80th Congress House Report No. 304.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of murder or robbery, see section 2516 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in section 35 of this title.

§ 1991. Entering train to commit crime

Whoever, in any Territory or District, or within or upon any place within the exclusive

jurisdiction of the United States, willfully and maliciously trespasses upon or enters upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder or robbery, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, within such jurisdiction, willfully and maliciously trespasses upon or enters upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person.

(June 25, 1948, ch. 645, 62 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 522 (Mar. 4, 1909, ch. 321, § 322, 35 Stat. 1150).

After the word "Whoever" the following was inserted: "in any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States" as based upon the express provisions of title 18, U.S.C., 1940 ed., § 511, wherein this section is made applicable only "in any Territory or District, or within or upon any place within the exclusive jurisidction of the United States."

Words "whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein" were omitted as unnecessary. Such persons are made principals by section 2 of this title.

Minor changes also were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

Larceny, etc., of goods from railroad car or station, see section 659 of this title.

Railroad car entered or seal broken, see section 2117 of this title.

Wire or oral communications, authorization for interception, to provide evidence of murder or robbery, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1992. Wrecking trains

Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or

Whoever willfully sets fire to, or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise makes any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce; or

Whoever willfully attempts to do any of the aforesaid acts or things—

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Whoever is convicted of any such crime, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, if the court in its discretion shall so order.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

(June 25, 1948, ch. 645, 62 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 412a (June 8, 1940, ch. 286, 54 Stat. 255).

First clause in second paragraph of said section 412a of title 18, U.S.C., 1940 ed., was omitted as covered by section 3231 of this title.

Words "and on conviction thereof" were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

CHAPTER 99—RAPE

Sec.
2031. Special maritime and territorial jurisdiction.
2032. Carnal knowledge of female under 16.

§ 2031. Special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, commits rape shall suffer death, or imprisonment for any term of years or for life.

(June 25, 1948, ch. 645, 62 Stat. 795.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 457 (Mar. 4, 1909, ch. 321, § 278, 35 Stat. 1143).

Words "within the special maritime and territorial jurisdiction of the United States" were added to restrict the place of the offense to those places described in section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Rape by or upon Indians, see sections 1153 and 3242 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

§ 2032. Carnal knowledge of female under 16

Whoever, within the special maritime and territorial jurisdiction of the United States, carnally knows any female, not his wife, who has not attained the age of sixteen years, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense, be imprisoned not more than thirty years.

(June 25, 1948, ch. 645, 62 Stat. 795.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 458 (Mar. 4, 1909, ch. 321, § 279, 35 Stat. 1143).

Words "within the special maritime and territorial jurisdiction of the United States" were added to restrict the place of the offense to those places described in section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title.

Words "not his wife" were inserted and word "unlawfully" was deleted to make section more explicit.

Words "or shall be accessory to such carnal and unlawful knowledge before the fact" were deleted as unnecessary in view of section 2 of this title defining principals.

Minor changes were also made in phraseology.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

CHAPTER 101—RECORDS AND REPORTS

Sec.
2071. Concealment, removal, or mutilation generally.
2072. False crop reports.
2073. False entries and reports of moneys or securities.
2074. False weather reports.
2075. Officer failing to make returns or reports.
2076. Clerk of United States District Court.

CROSS REFERENCES

War contract records, see section 443 of this title.

§ 2071. Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 695.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 234, 235 (Mar. 4, 1909, ch. 321, §§ 128, 129, 35 Stat. 1111, 1112).

Section consolidates sections 234 and 235 of title 18, U.S.C., 1940 ed.

Reference in subsection (a) to intent to steal was omitted as covered by section 641 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 1901, 2381, 2385, and 2387 of this title.

Theft of—

Court record or process, see section 1506 of this title.

Records, see section 641 of this title.

War contract records, see section 443 of this title.

§ 2072. False crop reports

Whoever, being an officer or employee of the United States or any of its agencies, whose duties require the compilation or report of statistics or information relating to the products of the soil, knowingly compiles for issuance, or issues, any false statistics or information as a report of the United States or any of its agencies, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 795.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 215 (Mar. 4, 1909, ch. 321, § 124, 35 Stat. 1111).

Words "or any of its agencies" were inserted after "United States" so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

§ 2073. False entries and reports of moneys or securities

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 795.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 189 (Mar. 4, 1911, ch. 270, 36 Stat. 1355).

Words "or any of its agencies" were inserted after "United States" so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

References to persons aiding and abetting were omitted. Such persons are principals under section 2 of this title.

Minor verbal changes were made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 2074. False weather reports

Whoever knowingly issues or publishes any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than $500 or imprisoned not more than ninety days, or both.

(June 25, 1948, ch. 645, 62 Stat. 795.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 117 (Mar. 4, 1909, ch. 321, § 61, 35 Stat. 1100).

Minor verbal changes were made.

References in Text

The United States Signal Service, referred to in text, is now the Signal Corps which is a branch of the Army, see section 3063 of Title 10, Armed Forces.

Transfer of Functions

The Weather Bureau of the Department of Commerce was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the Bureau were transferred to the Secretary of Commerce by the Plan.

The Environmental Science Services Administration was abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce. By Department Organization Order 25-5A, republished 39 F.R. 27486, the Secretary of Commerce delegated to NOAA his functions relating to the Weather Bureau. By order of the Acting Associate Administrator of NOAA, the organization name of the Weather Bureau was changed to the National Weather Service. For further details, see the Codification note under section 311 of Title 15, Commerce and Trade.

§ 2075. Officer failing to make returns or reports

Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined not more than $1,000.

(June 25, 1948, ch. 645, 62 Stat. 796.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 188, (Mar. 4, 1909, ch. 321, § 101, 35 Stat. 1107).

§ 2076. Clerk of United States District Court

Whoever, being a clerk of a district court of the United States, willfully refuses or neglects to make or forward any report, certificate, statement, or document as required by law, shall be fined not more than $1,000 or imprisoned not more than one year.

(June 25, 1948, ch. 645, 62 Stat. 796.)

Historical and Revision Notes

Based on section 522 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Feb. 22, 1875, ch. 95, § 6, 18 Stat. 334).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of "misdemeanor" in section 1 of this title.

The last sentence providing that conviction should not be a condition precedent to removal from office was omitted as unnecessary.

Minor changes were made in phraseology.

Cross References

Removal of clerk from office, see section 751 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 102—RIOTS

Sec.
2101. Riots.
2102. Definitions.

Amendments

1968—Pub. L. 90-284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 75, added chapter 102 and items 2101 and 2102.

Chapter Referred to in Other Sections

This chapter is referred to in section 2516 of this title.

§ 2101. Riots

(a)(1) Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television, with intent—

(A) to incite a riot; or

(B) to organize, promote, encourage, participate in, or carry on a riot; or

(C) to commit any act of violence in furtherance of a riot; or

(D) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot;

and who either during the course of any such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraph (A), (B), (C), or (D) of this paragraph—

Shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(b) In any prosecution under this section, proof that a defendant engaged or attempted to engage in one or more of the overt acts described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subsection (a) and (1) has traveled in interstate or foreign commerce, or (2) has use of or used any facility of interstate or foreign commerce, including but not limited to mail, telegraph, telephone, radio, or television, to communicate with or broadcast to any person or group of persons prior to such overt acts, such travel or use shall be admissible proof to establish that such defendant traveled in or used such facility of interstate or foreign commerce.

(c) A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

(d) Whenever, in the opinion of the Attorney General or of the appropriate officer of the De-

partment of Justice charged by law or under the instructions of the Attorney General with authority to act, any person shall have violated this chapter, the Department shall proceed as speedily as possible with a prosecution of such person hereunder and with any appeal which may lie from any decision adverse to the Government resulting from such prosecution; or in the alternative shall report in writing, to the respective Houses of the Congress, the Department's reason for not so proceeding.

(e) Nothing contained in this section shall be construed to make it unlawful for any person to travel in, or use any facility of, interstate or foreign commerce for the purpose of pursuing the legitimate objectives of organized labor, through orderly and lawful means.

(f) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section; nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local laws.

(Added Pub. L. 90-284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 75.)

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this chapter, see section 2516 of this title.

§ 2102. Definitions

(a) As used in this chapter, the term "riot" means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

(b) As used in this chapter, the term "to incite a riot", or "to organize, promote, encourage, participate in, or carry on a riot", includes, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written (1) advocacy of ideas or (2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts.

(Added Pub. L. 90-284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 76.)

CHAPTER 103—ROBBERY AND BURGLARY

Sec.
2111. Special maritime and territorial jurisdiction.
2112. Personal property of United States.
2113. Bank robbery and incidental crimes.
2114. Mail, money, or other property of United States.
2115. Post office.
2116. Railway or steamboat post office.
2117. Breaking or entering carrier facilities.

AMENDMENTS

1966—Pub. L. 89-654, § 2(d), Oct. 14, 1966, 80 Stat. 904, substituted "Breaking or entering carrier facilities" for "Railroad car entered or seal broken" in item 2117.

CROSS REFERENCES

Extradition of fugitives from country under control of United States, see section 3185 of this title.

Indian country, punishment, see section 1153 of this title.

Indians, jurisdiction of offenses by, see section 3242 of this title.

Piracy, robbery ashore by those engaged in piratical cruise, see section 1661 of this title.

Wire or oral communications, authorization for interception, to provide evidence of robbery, see section 2516 of this title.

§ 2111. Special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

(June 25, 1948, ch. 645, 62 Stat. 796.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 463 (Mar. 4, 1909, ch. 321, § 284, 35 Stat. 1144).

Words "within the special maritime and territorial jurisdiction of the United States" were added to restrict the place of the offense to those places described in section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Actions aboard aircraft in flight in violation of this section punishable as provided herein, see section 1472 of Title 49, Transportation.

Definition, see section 7 of this title.

High seas, citizens as pirates, see section 1652 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1472.

§ 2112. Personal property of United States

Whoever robs another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years.

(June 25, 1948, ch. 645, 62 Stat. 796.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 99 (Mar. 4, 1909, ch. 321, § 46, 35 Stat. 1097).

That portion of said section 99 relating to felonious taking was omitted as covered by section 641 of this title.

The punishment by fine of not more than $5,000 or imprisoned not more than 10 years, or both, was changed to harmonize with section 2111 of this title.

The 15-year penalty is not excessive for an offense of this type.

Minor verbal change was made.

CROSS REFERENCES

Embezzlement and theft of public property, see section 641 of this title.

§ 2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or punished by death if the verdict of the jury shall so direct.

(f) As used in this section the term "bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(g) As used in this section the term "savings and loan association" means any Federal savings and loan association and any "insured institution" as defined in section 401 of the National Housing Act, as amended, and any "Federal credit union" as defined in section 2 of the Federal Credit Union Act.

(h) As used in this section the term "credit union" means any Federal credit union and any State-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(June 25, 1948, ch. 645, 62 Stat. 796; Aug. 3, 1950, ch. 516, 64 Stat. 394; Apr. 8, 1952, ch. 164, 66 Stat. 46; Sept. 22, 1959, Pub. L. 86-354, § 2, 73 Stat. 639; Oct. 19, 1970, Pub. L. 91-468, § 8, 84 Stat. 1017.)

HISTORICAL AND REVISION NOTES

Based on sections 588a, 588b, 588c, of title 12, U.S.C., 1940 ed., Banks and Banking (May 18, 1934, ch. 304, §§ 1, 2, 3, 48 Stat. 783; Aug. 23, 1935, ch. 614, § 333, 49 Stat. 720; Aug. 24, 1937, ch. 747, 50 Stat. 749; June 29, 1940, ch. 455, 54 Stat. 695).

Section consolidates sections 588a, 588b, and 588c of title 12, U.S.C., 1940 ed., Banks and Banking, as suggested by United States Attorney Clyde O. Eastus, of Fort Worth, Tex.

Words "felony or larceny" in subsection (a) were changed to "felony affecting such bank and in violation of any statute of the United States, or any larceny".

Use of term "felony" without limitation caused confusion as to whether a common law, State, or Federal felony was intended. Change conforms with *Jerome* v. *U.S.* (1943, 63 S. Ct. 483, 318 U.S. 101, 87 L. Ed. 640): "§ 2(a) [§ 588b(a) of title 12, U.S.C., 1940 ed., Banks and Banking] is not deprived of vitality if it is interpreted to exclude State felonies and to include only those Federal felonies which affect banks protected by the Act."

Minimum punishment provisions were omitted from subsection (c). (See reviser's note under section 203 of this title.) Also the provisions of subsection (b) measuring the punishment by the amount involved were extended and made applicable to the receiver as well as the thief. There seems no good reason why the thief of less than $100 should be liable to a maximum of imprisonment for one year and the receiver subject to 10 years.

The figures "100" were substituted for "50" in view of the fact that the present worth of $100 is less than the value of $50 when that sum was fixed as the dividing line between petit larceny and grand larceny.

The attention of Congress is directed to the mandatory minimum punishment provisions of sections 2113(e) and 2114 of this title. These were left unchanged because of the controversial question involved. Such legislative attempts to control the discretion of the sentencing judge are contrary to the opinions of experienced criminologists and criminal law experts. They are calculated to work manifest injustice in many cases.

Necessary minor translations of section references, and changes in phraseology, were made.

REFERENCES IN TEXT

Section 401 of the National Housing Act, referred to in the text of subsection (g), is classified to section 1724 of Title 12, Banks and Banking.

Section 2 of the Federal Credit Union Act, referred to in subsec. (g), is classified to section 1752 of Title 12.

AMENDMENTS

1970—Subsecs. (a) to (c). Pub. L. 91-468, § 8(1) added reference to "credit union" following the word "bank," each place it appears.

Subsec. (h). Pub. L. 91-468, § 8(2) added subsec. (h).

1959—Subsec. (g). Pub. L. 86-354 included Federal credit unions in the definition of "savings and loan association".

1952—Subsec. (g). Act Apr. 8, 1952, broadened the definition of "savings and loan association" by including any institution insured by the Federal Savings and Loan Insurance Corporation under title IV of the National Housing Act, sections 1724 to 1730 of Title 12, Banks and Banking.

1950—Act Aug. 3, 1950, brought within section State-chartered savings and loan associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

CROSS REFERENCES

Embezzlement by bank officer or employee, see section 656 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457.

§ 2114. Mail, money or other property of United States

Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

(June 25, 1948, ch. 645, 62 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 320 (Mar. 4, 1909, ch. 321, § 197, 35 Stat. 1126; Aug. 26, 1935, ch. 694, 49 Stat. 867).

The attention of Congress is directed to the mandatory minimum punishment provisions of sections 2113(e) and 2114 of this title. These were left unchanged because of the controversial question involved. Such legislative attempts to control the discretion of the sentencing judge are contrary to the opinions of experienced criminologists and criminal law experts. They are calculated to work manifest injustice in many cases.

Minor changes were made in phraseology.

CROSS REFERENCES

Temporarily employed messengers as employees of the postal service or carriers with custody, see section 1008 of Title 39, Postal Service.

Theft of mail matter, see section 1708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1008.

§ 2115. Post office

Whoever forcibly breaks into or attempts to break into any post office, or any building used in whole or in part as a post office, with intent to commit in such post office, or building or part thereof, so used, any larceny or other depredation, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 315 (Mar. 4, 1909, ch. 321, § 192, 335 Stat. 1125).

Mandatory punishment provisions were rephrased in the alternative.

Minor change in phraseology was made.

§ 2116. Railway or steamboat post office

Whoever, by violence, enters a post-office car, or any part of any car, steamboat, or vessel, assigned to the use of the mail service, or willfully or maliciously assaults or interferes with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 316 (Mar. 4, 1909, ch. 321, § 193, 35 Stat. 1125).

Reference to persons aiding or assisting was deleted as unnecessary because such persons are made principals by section 2 of this title.

Minor changes were made in phraseology.

§ 2117. Breaking or entering carrier facilities

Whoever breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing interstate or foreign shipments of freight or express or other property, or enters any such vehicle or pipeline system with intent in either case to commit larceny therein, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

(June 25, 1948, ch. 645, 62 Stat. 797; May 24, 1949, ch. 139, § 44, 63 Stat. 96; Oct. 14, 1966, Pub. L. 89-654, § 2(a)-(c), 80 Stat. 904.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 409 (Feb. 13, 1913, ch. 50, § 1, 37 Stat. 670; Jan. 28, 1925, ch. 102, 43 Stat. 793; Jan. 21, 1933, ch. 16, 47 Stat. 773; July 24, 1946, ch. 606, 60 Stat. 656).

Other provisions of section 409 of title 18, U.S.C., 1940 ed., were incorporated in sections 659 and 660 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 44] conforms section 2117 of title 18, U.S.C., more closely with the original law from which it was derived, and with section 659 of such title.

AMENDMENTS

1966—Pub. L. 89-654 substituted "Breaking or entering carrier facilities" for "Railroad car entered or seal broken" as the section catchline, inserted reference to "pipeline system", substituted "freight or express or other property" for "freight or express", and prohibited any construction which might indicate a Congressional intent to occupy the field or invalidate State law.

1949—Act May 24, 1949, added last par.

EX. ORD. NO. 11836. TRANSPORTATION CARGO SECURITY PROGRAM

Ex. Ord. No. 11836, Jan. 27, 1975, 40 F.R. 4255, provided:

Theft of cargo has emerged during this decade as a serious threat to the reliability, efficiency, and integrity of the Nation's commerce. The total cost of theft-related cargo losses from our Nation's transportation system is now estimated to be in excess of one billion dollars annually. These losses seriously erode industry profits, result in higher prices for consumer goods, and provide support for unlawful activities.

In recognition of this problem, the Secretary of Transportation, at Presidential direction, has provided leadership, guidance, and technical assistance in coordinating the efforts of Federal agencies and the transportation industry in the search for solutions. Through the cooperative efforts of the Federal agencies, an effective National Cargo Security Program has been developed and is now being implemented on a voluntary basis in cooperation with the transportation industry, and with the support of State and local governments, shippers, consignees, organized labor, and insurers.

To assure more effective Federal leadership in this effort, I am directing that certain additional responsibilities be carried out by the Secretary of Transportation, delineating the functions and responsibilities of the other Federal departments and agencies with respect to the National Cargo Security Program, urging full participation and cooperation in the program by the independent regulatory agencies and all Federal departments and agencies, and requesting the Secretary of Transportation to submit to me on March 31, 1976, a full evaluation of the effectiveness of the Federal program.

NOW THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. *Responsibilities of the Secretary of Transportation.* The Secretary of Transportation shall be responsible for:

(1) assisting the transportation industry by planning, developing, and testing cargo security measures and by providing technical assistance and arranging demonstration projects related thereto;

(2) coordinating the activities of Federal departments and agencies relating to the prevention of cargo theft, and studying means by which Government agencies can, through the procurement of transportation services, improve the cargo security programs of common carriers;

(3) collecting and analyzing cargo loss data for all modes of transportation, and preparing and publishing periodic reports on the extent and nature of theft-related cargo losses, local and national loss trends, and other special analyses useful to the development of theft prevention measures; and

(4) issuing, after coordination with the interested Federal departments and agencies and after opportunity for public comment, Cargo Security Advisory Standards for the prevention of cargo losses by any elements of the transportation industry, including shippers and receivers.

SEC. 2. *Responsibilities of the Attorney General.* The Attorney General shall be responsible for:

(1) developing and conducting programs designed to promote the coordination of Federal, State, and local law enforcement efforts against criminal activity relating to cargo thefts; and

(2) supporting, to the extent possible and appropriate, the provision of financial assistance to State and local law enforcement organizations for the establishment and maintenance of cargo theft prevention programs and for the investigation, prosecution, and prevention of cargo theft.

SEC. 3. *Responsibilities of the Secretary of the Treasury.* The Secretary of the Treasury shall be responsible for:

(1) Fostering the security of international cargo in customs custody within ports of entry and in its movement and storage in bond;

(2) Investigating the theft of cargo stolen from customs custody and, consistent with the responsibilities of the Bureau of Alcohol, Tobacco and Firearms, the theft of firearms, ammunition, explosives, tobacco, and alcohol;

(3) Analyzing cargo theft reports to identify theft-conducive practices and theft-prone facilities employed in the handling of cargo controlled by the Customs Service at ports of entry, providing for the implementation of cargo security advisory standards with respect to that cargo, and initiating other corrective measures as appropriate; and

(4) Coordinating with the Department of Transportation and other interested Federal departments and agencies measures being proposed to improve the security of cargo at facilities controlled by the Customs Service.

SEC. 4. *Recommended Actions by the Transportation Regulatory Agencies.* The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission are urged, in exercising their regulatory responsibilities, to recognize and consider the problem of theft-related cargo losses and encourage preventive measures, and to continue to cooperate with the Department of Transportation by:

(1) Developing cargo theft reporting systems affording full opportunity for presentation of views by the public, the Department of Transportation, other interested Federal departments and agencies, and those elements of the transportation industry from which reports would be required;

(2) Obtaining cargo loss data from carriers, freight forwarders, and terminal operators (including such information as cargo lost, missing, stolen, presumed stolen, or damaged as a result of theft); and

(3) Providing the Department of Transportation with the cargo loss data collected in a form that will permit both general and detailed analyses and preparation of reports on an intermodal and national basis.

SEC. 5. *Recommended Action by Federal Departments and Agencies.* All Federal departments and agencies, in their procurement of transportation services for goods and commodities, are urged to encourage carriers to adopt cargo theft prevention measures.

SEC. 6. *Report and Recommendations.* The Secretary of Transportation shall submit to me on March 31, 1976, and annually thereafter, a report evaluating and making recommendations concerning the effectiveness of the Federal program prescribed by this Order in reducing theft-related cargo losses.

GERALD R. FORD.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

Entering train to commit murder or robbery, see section 1991 of this title.

CHAPTER 105—SABOTAGE

Sec.
2151. Definitions.
2152. Fortifications, harbor defenses, or defensive sea areas.
2153. Destruction of war material, war premises or war utilities.
2154. Production of defective war material, war premises or war utilities.
2155. Destruction of national-defense materials, national-defense premises or national-defense utilities.
2156. Production of defective national-defense material, national-defense premises or national-defense utilities.
2157. Temporary extension of sections 2153 and 2154.

Amendments

1954—Act Sept. 3, 1954, ch. 1261, § 106, 68 Stat. 1219, changed items 2153 to 2156 to read as now set out.

1953—Act June 30, 1953, ch. 175, § 1, 67 Stat. 133, added item 2157.

Cross References

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this chapter, see section 3505 of Title 38, Veterans' Benefits.

Security regulations and orders, penalty for violation of, see section 797 of Title 50, War and National Defense.

Wire or oral communications, authorization for interception, to provide evidence of offenses under this chapter, see section 2516 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 38 section 3505; title 42 section 402; title 50 section 792a.

§ 2151. Definitions

As used in this chapter:

The words "war material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words "war premises" include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words "war utilities" include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurentances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

The words "associate nation" mean any nation at war with any nation with which the United States is at war.

The words "national-defense material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part of ingredient thereof, intended for, adapated to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words "national-defense premises" include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words "national-defense utilities" include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas may be furnished to any national-defense premise or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

(June 25, 1948, ch. 645, 62 Stat. 798; June 30, 1953, ch. 175, § 2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, § 101, 68 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Based on sections 101, 104, of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, §§ 1, 4, 40 Stat. 533; Nov. 30, 1940, ch. 926, 54 Stat. 1220; Aug. 21, 1941, ch. 388, 55 Stat. 655; Dec. 24, 1942, ch. 824, 56 Stat. 1087).

Section consolidated definitive sections 101 and 104 of title 50, U.S.C., 1940 ed., War and National Defense.

Words "As used in this chapter" were inserted at beginning for brevity.

Definition of "United States", was omitted as covered by section 5 of this title.

Minor changes were made in phraseology and translations.

AMENDMENTS

1954—Act Sept. 3, 1954, redefined and enlarged definitions.

1953—Act June 30, 1953, inserted in definition of "war material" the words "or defense activities" following "conduct of war".

SHORT TITLE

Section 1 of act Sept. 3, 1954, provided that: "This Act [amending sections 794, 2151, and 2153 to 2156 of this title] may be cited as the 'Espionage and Sabotage Act of 1954'."

REPEALS

Section 7 of act June 30, 1953, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, formerly set out as credits to this section and also formerly set out as a note under this section.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Repeal of Prior Extensions of War-time Provisions, see note under section 794 of this title.

War material, amendment of definition, see section 2157 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 2157 of this title; title 8 section 1251.

§ 2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constucted or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 799.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 96 (Mar. 4, 1909, ch. 321, § 44, 35 Stat. 1097; Mar. 4, 1917, ch. 180, 39 Stat. 1194; May 22, 1917, ch. 20, § 19, 40 Stat. 89).

Jurisdiction and venue provisions were omitted as unnecessary and inconsistent with Rule 18 of the Federal Rules of Criminal Procedure providing for prosecution where the offense is committed, and section 3238 of this title providing that trial of offenses committed outside any district shall be in the district where the offender is found, or into which he is first brought.

Words "on conviction thereof" were omitted as surplusage as punishment cannot be imposed until conviction is had.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

EXECUTIVE ORDER NO. 10361

Ex. Ord. No. 10361, June 12, 1952, 17 F.R. 5357, formerly set out as a note under this section, which established the Whittier Defensive Sea Area, Alaska, was revoked by Ex. Ord. No. 11549, July 28, 1970, 35 F.R. 12191.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 2153. Destruction of war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; June 30, 1953, ch. 175, § 2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, § 102, 68 Stat. 1217.)

HISTORICAL AND REVISION NOTES

Based on section 102 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 2, 40 Stat. 534).

"As herein defined" was deleted as surplusage.

The conspiracy provisions are new. Their addition to the section was strongly urged by the Criminal Division of the Department of Justice, considering the gravity of the substantive offense as evidenced by the prescribed punishment therefor. The punishment provisions of the general conspiracy statute, section 371 of this title, are inadequate.

Words "upon conviction thereof" were omitted as unnecessary since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Sept. 3, 1954, made section applicable in time of national emergency as well as war, and recognized the possibility of bacteriological warfare by making "contamination" a crime.

1953—Subsec. (a). Act June 30, 1954, inserted "or defense activities" immediately following "carrying on the war".

REPEALS

Section 7 of act June 30, 1953, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, formerly set out as credits to this section and also formerly set out as a note under this section.

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 2157 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Repeal of Prior Extensions of War-time Provisions, see note under section 794 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 2157 of this title; title 8 section 1251.

§ 2154. Production of defective war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; June 30, 1953, ch. 175, § 2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, § 103, 68 Stat. 1218.)

HISTORICAL AND REVISION NOTES

Based on section 103 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 3, 40 Stat. 534).

The conspiracy provisions are new. Their addition to the section was strongly urged by the Criminal Division of the Department of Justice, considering the gravity of the substantive offense as evidenced by the prescribed punishment therefor. The punishment provisions of the general conspiracy statute, section 371 of this title, are inadequate.

Words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Sept. 3, 1954, made section applicable in time of national emergency, and enlarged its scope by bringing "war premises, or war utilities" within the jurisdiction of the section.

1953—Subsec. (a). Act June 30, 1953, inserted "or defense activities" immediately following "carrying on the war".

REPEALS

Section 7 of act June 30, 1953, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, formerly set out as credits to this section and also formerly set out as a note under this section.

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 2157 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Conspiracy to commit offense generally, see section 371 of this title.

Production of defective national-defense material, see section 2156 of this title.

Repeal of Prior Extensions of War-time Provisions, see note under section 794 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 2157 of this title; title 8 section 1251.

§ 2155. Destruction of national-defense materials, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; Sept. 3, 1954, ch. 1261, title I, § 104, 68 Stat. 1218.)

HISTORICAL AND REVISION NOTES

Based on section 105 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 5, as added Nov. 30, 1940, ch. 926, 54 Stat. 1221).

Words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Sept. 3, 1954, added conspiracy provisions.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 8 section 1251.

§ 2156. Production of defective national-defense material, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts, to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 800; Sept. 3, 1954, ch. 1261, title I, § 105, 68 Stat. 1218.)

HISTORICAL AND REVISION NOTES

Based on section 106 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 6, as added Nov. 30, 1940, ch. 926, 54 Stat. 1221).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1954—Act Sept. 3, 1954, added conspiracy provisions.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Production of defective war material, see section 2154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 8 section 1251.

§ 2157. Temporary extension of sections 2153 and 2154

(a) The provisions of sections 2153 and 2154 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Pub. Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71) or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under any of these provisions when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

(b) Effective in each case for the period above provided for, title 18, United States Code, section 2151, is amended by inserting the words "or defense activities" immediately before the period at the end of the definition of "war material", and said sections 2153 and 2154 are amended by inserting the words "or defense activities" immediately after the words "carrying on the war" wherever they appear therein.

(Added June 30, 1953, ch. 175, § 2, 67 Stat. 133.)

REFERENCES IN TEXT

Section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in subsec. (a), formerly set out as a note under section 2151 of this title, was repealed by section 7 of act June 30, 1953.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in subsec. (a), is an erroneous citation. It probably should refer to Proc. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 107—SEAMEN AND STOWAWAYS

Sec.
2191. Cruelty to seamen.
2192. Incitation of seamen to revolt or mutiny.
2193. Revolt or mutiny of seamen.
2194. Shanghaiing sailors.
2195. Abandonment of sailors.
2196. Drunkenness or neglect of duty by seamen.
2197. Misuse of Federal certificate, license or document.
2198. Seduction of female passenger.
2199. Stoways on vessels or aircraft.

CROSS REFERENCES

Vessel of the United States defined, see section 9 of this title.

§ 2191. Cruelty to seamen

Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, flogs, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any corporal or other cruel and unusual punishment, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 482 and section 712 of title 46, U.S.C., 1940 ed., Shipping (Dec. 21, 898, ch. 28, § 22, 30 Stat. 761; Mar. 4, 1909, ch. 321, § 291, 35 Stat. 1145).

Section consolidates section 482 of title 18, U.S.C., 1940 ed., and the following language from section 712

of title 46, U.S.C., 1940 ed., Shipping, prohibiting flogging and corporal punishment: "and any master or other officer thereof who shall violate the aforesaid provisions of this section, or either thereof, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not less than three months nor more than two years." That language was the basis for the addition of the word "flogs" and the words "any corporal or other" for the word "any." The punishment imposed by section 482 was adopted as that was the later statute as incorporated in 1909 Criminal Code.

Words "shall be deemed guilty of a misdemeanor," contained in said section 712 of title 46, were omitted in view of definitive section 1 of this title.

Minor changes were made in phraseology.

CROSS REFERENCES

Complaint as to provisions or water, see sections 662 to 664 of Title 46, Shipping.

Corporal punishment prohibited; duty to surrender guilty officer; civil liability, see section 712 of Title 46.

Neglect to provide sufficient stores, penalty for, see sections 661, 665 of Title 46.

Penalty for failure to keep medicines, see sections 666, 667 of Title 46.

Recovery for injury to or death of seaman, see section 688 of Title 46.

Scale of provisions to be allowed and served out to the crew during the voyage, see section 713 of Title 46.

Surrendering officer inflicting corporal punishment, liability of master, see section 712 of Title 46.

Wages on justifiable complaint of seaman, see section 685 of Title 46.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 section 712.

§ 2192. Incitation of seamen to revolt or mutiny

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect his proper duty on board thereof, or to betray his proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 483 (Mar. 4, 1909, ch. 321, § 292, 35 Stat. 1146).

Minor changes were made in phraseology.

§ 2193. Revolt or mutiny of seamen

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 484 (Mar. 4, 1909, ch. 321, § 293, 35 Stat. 1146).

Punishment provision for mandatory fine and imprisonment was rephrased in the alternative so as to vest power in the court to impose either a fine, or imprisonment, or both, in its discretion.

CROSS REFERENCES

Willful disobedience to lawful command at sea and assault upon master or mate, see section 701 of Title 46, Shipping.

§ 2194. Shanghaiing sailors

Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, procures or induces, or attempts to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or

Whoever knowingly detains on board of any such vessel any person so procured or induced to go on board, or to enter into any agreement to go on board, by any means herein defined—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat 800.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 144 (Mar. 4, 1909, ch. 321, § 82, 35 Stat. 1103).

Reference to persons aiding or abetting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Minor changes were made in phraseology and arrangement.

§ 2195. Abandonment of sailors

Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than $500 or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 486 (Mar. 4, 1909, ch. 321, § 295, 35 Stat. 1146).

CROSS REFERENCES

Discharge of crews in coast trade, see section 646 of Title 46, Shipping.

Penalty for neglect of consular officer to collect wages, see section 683 of Title 46.

Wages on—

Discharge by consular officer, see section 682 of Title 46.

Justifiable complaint of seaman, see section 685 of Title 46.

§ 2196. Drunkenness or neglect of duty by seamen

Whoever, being a master, officer, radio operator, seaman, apprentice or other person employed on any merchant vessel, by willful breach of duty, or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage to, such vessel, or tending immediately to endanger the life or limb of any person belonging to or on board of such vessel; or, by willful breach of duty or by neglect of duty or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such vessel from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall be imprisoned not more than one year.

(June 25, 1948, ch. 645, 62 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on section 704 of title 46, U.S.C., 1940 ed., Shipping (R.S. § 4602).

Words "officer, radio operator," and "or other person employed on" were inserted at beginning of section to insure clarity and scope of section. Section 701 of title 46, U.S.C., 1940 ed., Shipping, is very similar to this section as revised, and has been applied to mates [*Morris* v. *Cornell*, D.C. Mass. 1843, Fed. Cas. No. 9,829; *Gladding* v. *Constant*, D.C. Mass. 1844, Fed. Cas. No. 5,468; *Foye* v. *Dabney*, D.C. Mass. 1853, Fed. Cas. No. 5,022; *Foye* v. *Lickie*, D.C. Mass. 1853, Fed. Cas. No. 5,023; *The Sylvia De Grasse*, D.C.N.Y. 1843, Fed. Cas. No. 12,676; *The Sadie C. Sumner*, D.C. Mass. 1905, 142 F. 611], as well as engineers, assistant engineers and cooks. (See notes of decisions under section 701, of title 46, U.S.C., Shipping.)

Words "be guilty of a misdemeanor" were omitted as unnecessary in view of general definition of "misdemeanor" in section 1 of this title.

Minor changes were made in phraseology including substitution of "one year" for "twelve months" at end of section.

CROSS REFERENCES

Application of section to vessels in certain coastwise trade, and to seamen entitled to participate in profits, see section 544 of Title 46, Shipping.

§ 2197. Misuse of Federal certificate, license or document

Whoever, not being lawfully entitled thereto, uses, exhibits, or attempts to use or exhibit, or, with intent unlawfully to use the same, receives or possesses any certificate, license, or document issued to vessels, or officers or seamen by any officer or employee of the United States authorized by law to issue the same; or

Whoever, without authority, alters or attempts to alter any such certificate, license, or document by addition, interpolation, deletion, or erasure; or

Whoever forges, counterfeits, or steals, or attempts to forge, counterfeit, or steal, any such certificate, license, or document; or unlawfully possesses or knowingly uses any such altered, changed, forged, counterfeit, or stolen certificate, license, or document; or

Whoever, without authority, prints or manufactures any blank form of such certificate, license, or document, or

Whoever possesses without lawful excuse, and with intent unlawfully to use the same, any blank form of such certificate, license, or document; or

Whoever, in any manner, transfers or negotiates such transfer of, any blank form of such certificate, license, or document, or any such altered, forged, counterfeit, or stolen certificate, license, or document, or any such certificate, license, or document to which the party transferring or receiving the same is not lawfully entitled—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on section 710a of title 46, U.S.C., 1940 ed., Shipping (June 25, 1936, ch. 816, § 6, 49 Stat. 1936).

The phrase "the Bureau of Marine Inspection and Navigation," identifying the agency issuing the certificate, license or document, was omitted without change of substance. The functions of the Bureau of Marine Inspection and Navigation were transferred to the Bureau of Customs and the Coast Guard by Executive Order 9083 Feb. 28, 1942, title 50, App. U.S.C., 1940 ed., following § 601. Such transfer is temporary under section 621 of title 50, App., U.S.C., 1940 ed. (First War Powers Act).

As revised the section is broad enough to embrace certificates, licenses and documents issued by the officers or employees of the Coast Guard and Customs Service, as the case may be.

Reference to persons causing, procuring, aiding or abetting was omitted as such persons are principals under section 2 of this title.

Words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Changes were made in phraseology and arrangement.

CROSS REFERENCES

Application of section to fishing or whaling vessels or yachts, see section 690 of Title 46, Shipping.

Appropriation to carry out provisions of section, see section 692 of Title 46.

Enforcement and regulations by Secretary of Commerce, see section 689 of Title 46.

§ 2198. Seduction of female passenger

Whoever, being a master, officer, seaman, or other person employed on board of any American vessel, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Subsequent intermarriage of the parties may be pleaded in bar of conviction and no conviction shall be had on the testimony of the female seduced without other evidence.

(June 25, 1948, ch. 645, 62 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 459, 460 (Mar. 4, 1909, ch. 321, §§ 280, 281, 35 Stat. 1143, 1144).

Section 459 of title 18, U.S.C., 1940 ed., and a part of section 460 of title 18, U.S.C., 1940 ed., were combined to form this section.

Provision in section 460 of title 18, U.S.C., 1940 ed., relating to disposal of the fine, was incorporated in section 3614 of this title; the provision limiting prosecutions was incorporated in section 3286 of this title; and the remainder retained in this section.

Minor changes were made in phraseology.

CROSS REFERENCES

Disposition of fine, see section 3614 of this title.

Limitation period for prosecutions, see section 3286 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3286, 3614 of this title.

§ 2199. Stowaways on vessels or aircraft

Whoever, without the consent of the owner, charterer, master, or person in command of any vessel, or aircraft, with intent to obtain transportation, boards, enters or secretes himself aboard such vessel or aircraft and is thereon at the time of departure of said vessel or aircraft from a port, harbor, wharf, airport or other place within the jurisdiction of the United States; or

Whoever, with like intent, having boarded, entered or secreted himself aboard a vessel or aircraft at any place within or without the jurisdiction of the United States, remains aboard after the vessel or aircraft has left such place and is thereon at any place within the jurisdiction of the United States; or

Whoever, with intent to obtain a ride or transportation, boards or enters any aircraft owned or operated by the United States without the consent of the person in command or other duly authorized officer or agent—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The word "aircraft" as used in this section includes any contrivance for navigation or flight in the air.

(June 25, 1948, ch. 645, 62 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 469–474 (June 11, 1940, ch. 326, §§ 1–3, 54 Stat. 306; Mar. 4, 1944, ch. 82, §§ 1–4, 58 Stat. 111; Apr. 10, 1944, ch. 162, 58 Stat. 188).

Sections consolidated and rewritten with changes of phraseology and substance.

In section 469 of title 18, U.S.C., 1940 ed., the element of intent not to pay for transportation was omitted as unnecessary since the payment of transportation will invariably remove the stowaway from the operation of the section by purchasing the master's "consent".

In section 472 of title 18, U.S.C., 1940 ed., the enumerations of State, Territory, Possession, District of Columbia, and The Canal Zone, was omitted as adequately covered by "place within the jurisdiction of the United States."

The punishment provision is the same as in sections 470, 472, and 473 of title 18, U.S.C., 1940 ed., but the fine is $500 more than the maximum fine provided by said section 469. There seemed no point, however, in preserving a differential in favor of the stowaway as against the aider and abettor of $500. The court can be trusted to exercise a wise discretion within the slightly larger limits provided by the revised section.

The provision for punishment of aiders and abettors in section 470 of title 18, U.S.C., 1940 ed., was omitted as unnecessary since they are punishable as principals by section 2 of this title.

Sections 471 and 474 of title 18, U.S.C., 1940 ed., were omitted as obviously unnecessary.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Exclusion of stowaways under immigration laws, see section 1182 of Title 8, Aliens and Nationality.

Unlawful bringing of aliens into United States, alien stowaways, see section 1323 of Title 8.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 109—SEARCHES AND SEIZURES

Sec.
2231. Assault or resistance.
2232. Destruction or removal of property to prevent seizure.
2233. Rescue of seized property.
2234. Authority exceeded in executing warrant.
2235. Search warrant procured maliciously.
2236. Searches without warrant.

CROSS REFERENCES

Procedure relating to searches and seizures, see sections 3101 to 3116 of this title and rule 41 of the Federal Rules of Criminal Procedure, Appendix to this title.

§ 2231. Assault or resistance

(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both; and—

(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 121, 253, 254, 628 (Mar. 4, 1909, ch. 321, § 65, 35 Stat. 1100; June 15, 1917, ch. 30, title XI, § 18, 40 Stat. 230; May 18, 1934, ch. 299, §§ 1, 2, 48 Stat. 780, 781; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, § 3, 49 Stat. 1940; Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391).

Section consolidates section 628 of title 18, U.S.C., 1940 ed., and the portion of section 121 of said title relating to resistance of persons authorized to make searches.

Punishment provided by section 121 of title 18, U.S.C., 1940 ed., was $2,000 fine and imprisonment for 1 year. Section 628 of said title was part of Espionage Act of June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231, prescribing fine of not more than $1,000 and imprisonment not exceeding 2 years for resisting service, execution of search warrant, or assaulting an officer.

Section 253 of title 18, U.S.C., 1940 ed., enumerated United States marshals, deputies, and assistants, Fed-

eral Bureau of Investigation agents, and numerous other officers, the killing of whom is denounced as a Federal offense.

Section 254 of title 18, U.S.C., 1940 ed., denounced the assaulting of such officers and prescribed punishment therefor without regard to nature of duties involved or performed.

In other words sections 253 and 254 of title 18, U.S.C., 1940 ed., were not limited to officers executing search warrants.

Officers enumerated in section 253 of title 18, U.S.C., 1940 ed., were substantially all those who serve or execute search warrants. Therefore, the language and punishment under section 254 of said title constitute basis of this revised section. No change in legislative intent is involved, as the amendments of sections 253 and 254 of said title are the latest enactments.

The provisions of section 121 of title 18, U.S.C., 1940 ed., relating to rescue of property from seizing officer or its destruction to prevent seizure, are incorporated in sections 2232 and 2233 of this title.

Minor changes were made in translation and phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Assaulting or resisting certain officers or employees, see section 111 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Protection of officers and employees of United States, see section 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 2232. Destruction or removal of property to prevent seizure

Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 121 (Mar. 4, 1909, ch. 321, § 65, 35 Stat. 1100).

Section was formed from the words following the first semicolon and ending with the second semicolon, in section 121 of title 18, U.S.C., 1940 ed.

The remaining provisions of section 121 of title 18, U.S.C., 1940 ed., relating to assaulting, resisting, or interfering with customs officers, revenue officers, or other persons, and to the rescue of seized property, constitute, along with provisions from other sections, sections 2231 and 2233 of this title.

Minor changes were made in phraseology.

§ 2233. Rescue of seized property

Whoever forcibly rescues, dispossesses, or attempts to rescue or dispossess any property, articles, or objects after the same shall have been taken, detained, or seized by any officer or other person under the authority of any revenue law of the United States, or by any person authorized to make searches and seizures, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 121, 128 (Mar. 4, 1909, ch. 321, §§ 65, 71, 35 Stat. 1100, 1101).

Section consolidates that portion of section 121 of title 18, U.S.C., 1940 ed., relating to rescue of seized property, with section 128 of title 18, U.S.C., 1940 ed.

The remaining provisions of section 121 of present title 18, U.S.C., 1940 ed., relating to assaulting, resisting, or interfering with customs officers, revenue officers, or other persons, and to the destruction or removal of property to prevent seizure, constitute sections 2231 and 2232 of this title, the former provisions being consolidated with certain provisions of other sections.

Said section 121 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than $2,000 or imprisonment of not more than 1 year, or both, of persons rescuing, attempting to rescue, or causing to be rescued, "any property" which has been seized by "any person" authorized to make searches and seizures.

Said section 128 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than $300 and imprisonment for not more than 1 year of persons dispossessing, rescuing, or attempting to dispossess or rescue, or aiding or assisting in dispossessing or rescuing, "any property taken or detained by any officer or other person under the authority of any revenue law of the United States."

This revised section adopts the maximum fine provisions of section 121 of title 18, U.S.C., 1940 ed., and extends the maximum term of imprisonment to 2 years. This was deemed advisable so that uniformity of punishment would be established and the provisions would be sufficiently broad to impose punishment commensurate with the gravity of the offense. (See section 3601(c)(2) of title 26, U.S.C., 1940 ed., Internal Revenue Code.)

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

§ 2234. Authority exceeded in executing warrant

Whoever, in executing a search warrant, willfully exceeds his authority or exercises it with unnecessary severity, shall be fined not more than $1,000 or imprisoned not more than one year.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 631 (June 15, 1917, ch. 30, title XI, § 21, 40 Stat. 230).

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Breaking doors or windows to execute warrant, see section 3109 of this title.

Jurisdiction of offenses, see section 3241 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title; title 21 section 885.

§ 2235. Search warrant procured maliciously

Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined not more than $1,000 or imprisoned not more than one year.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 630 (June 15, 1917, ch. 30, title XI, § 20, 40 Stat. 230).

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3401 of this title; title 21 section 885.

§ 2236. Searches without warrant

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not apply to any person—

(a) serving a warrant of arrest; or

(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

(c) making a search at the request or invitation or with the consent of the occupant of the premises.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 53a (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877).

Words "or any department or agency thereof" were inserted to avoid ambiguity as to scope of section. (See definitive section 6 of this title.)

The exception in the case of an invitation or the consent of the occupant, was inserted to make the section complete and remove any doubt as to the application of this section to searches which have uniformly been upheld.

Reference to misdemeanor was omitted in view of definitive section 1 of this title. (See reviser's note under section 212 of this title.)

Words "upon conviction thereof shall be" were omitted as surplusage, since punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

CROSS REFERENCES

False representation as officer and search by impersonator, see section 913 of this title.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

Unreasonable searches and seizures prohibited, see Const. Amend. 4.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3401 of this title.

CHAPTER 111—SHIPPING

Sec.
2271. Conspiracy to destroy vessel.[1]
2272. Destruction of vessel by owner.
2273. Destruction of vessel by nonowner.
2274. Destruction or misuse of vessel by person in charge.
2275. Firing or tampering with vessel.[1]
2276. Breaking and entering vessel.
2277. Explosives or dangerous weapons aboard vessels.
2278. Explosives on vessels carrying steerage passengers.
2279. Boarding vessels before arrival.

CROSS REFERENCES

Special maritime and territorial jurisdiction of the United States defined, see section 7 of this title.

Wrecking ships; false beacons; plundering wrecks; obstructing escape from shipwreck, see section 1658 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 35 of this title.

§ 2271. Conspiracy to destroy vessels

Whoever, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or

Whoever, within the United States, builds, or fits out any vessel to be cast away or destroyed, with like intent—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 487 (Mar. 4, 1909, ch. 321, § 296, 35 Stat. 1146).

Mandatory punishment provision was rephrased in the alternative.

Reference to a person who "aids in building or fitting out any vessel" was omitted as unnecessary in view of section 2 making all aiders guilty as principal.

Changes in phraseology were made.

§ 2272. Destruction of vessel by owner

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of which he is owner, in whole or in part, with intent to injure any person that may underwrite any policy of insurance thereon, or

[1] So in original. Does not conform to section catchline.

any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 491 (Mar. 4, 1909, ch. 321, § 300, 35 Stat. 1147).

§ 2273. Destruction of vessel by nonowner

Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or willfully attempts the destruction thereof, shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 492 (Mar. 4, 1909, ch. 321, § 301, 35 Stat. 1147).

Words "with intent to destroy the same, sets fire to any such vessel, or otherwise" following "willfully" and preceding "attempts" were omitted as surplusage.

§ 2274. Destruction or misuse of vessel by person in charge

Whoever, being the owner, master or person in charge or command of any private vessel, foreign or domestic, or a member of the crew or other person, within the territorial waters of the United States, willfully causes or permits the destruction or injury of such vessel or knowingly permits said vessel to be used as a place of resort for any person conspiring with another or preparing to commit any offense against the United States, or any offense in violation of the treaties of the United States or of the obligations of the United States under the law of nations, or to defraud the United States; or knowingly permits such vessels to be used in violation of the rights and obligations of the United States under the law of nations, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In case such vessels are so used, with the knowledge of the owner or master or other person in charge or command thereof, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on section 193 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title II, § 3, 40 Stat. 220; Mar. 28, 1940, ch. 72, § 3(b), 54 Stat. 79).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The customs revenue laws, referred to in text, are classified generally to Title 19, Customs Duties.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Drunkenness of master or seamen, see section 2196 of this title.

Firing or tampering with vessels, see section 2275 of this title.

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 2275. Firing or tampering with vessels

Whoever sets fire to any vessel of foreign registry, or any vessel of American registry entitled to engage in commerce with foreign nations, or to any vessel of the United States, or to the cargo of the same, or tampers with the motive power of instrumentalities of navigation of such vessel, or places bombs or explosives in or upon such vessel, or does any other act to or upon such vessel while within the jurisdiction of the United States, or, if such vessel is of American registry, while she is on the high sea, with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom and whoever attempts to do so shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 502 (June 15, 1917, ch. 30, title III, § 1, 40 Stat. 221).

Words "as defined in section 501 of this title," were omitted in view of section 9 of this title, defining vessel of the United States.

Last sentence of said section 502, defining "United States", was incorporated in section 5 of this title.

Provision prohibiting conspiracy was deleted as adequately covered by the general conspiracy statute, section 371 of this title.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281 and 1282 of Title 15, Commerce and Trade.

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 2276. Breaking and entering vessel

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy rope, head fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more

than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 490 (Mar. 4, 1909, ch. 321, § 299, 35 Stat. 1147).

Mandatory punishment provision was rephrased in the alternative.

CROSS REFERENCES

Destruction of property moving in commerce, see sections 1281, 1282 of Title 15, Commerce and Trade.

§ 2277. Explosives or dangerous weapons aboard vessels

(a) Whoever brings, carries, or possesses any dangerous weapon, instrument, or device, or any dynamite, nitroglycerin, or other explosive article or compound on board of any vessel registered, enrolled, or licensed under the laws of the United States, or any vessel purchased, requisitioned, chartered, or taken over by the United States pursuant to the provisions of Act June 6, 1941, ch. 174, 55 Stat. 242, as amended, without previously obtaining the permission of the owner or the master of such vessel; or

Whoever brings, carries, or possesses any such weapon or explosive on board of any vessel in the possession and under the control of the United States or which has been seized and forfeited by the United States or upon which a guard has been placed by the United States pursuant to the provisions of section 191 of Title 50, without previously obtaining the permission of the captain of the port in which such vessel is located, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) This section shall not apply to the personnel of the Armed Forces of the United States or to officers or employees of the United States or of a State or of a political subdivision thereof, while acting in the performance of their duties, who are authorized by law or by rules or regulations to own or possess any such weapon or explosive.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 503, 504 (Dec. 31, 1941, ch. 642, §§ 1, 2, 55 Stat. 876).

Section consolidates sections 503 and 504 of title 18, U.S.C., 1940 ed.

Words "This section" were substituted in subsection (b) for the words "The provisions of sections 503, 504 of this title".

Minor changes were made in phraseology.

REFERENCES IN TEXT

Act June 6, 1941, ch. 174, 55 Stat. 242, as amended referred to in text of subsec. (a), expired July 1, 1953. For provisions covering the subject matter of that Act, see sections 196 to 198 of Title 50, War and National Defense.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Transportation of explosives by vessels, see section 170 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 2278. Explosives on vessels carrying steerage passengers

Whoever, being the master of a steamship or other vessel referred to in section 151 of Title 46, except as otherwise expressly provided by law, takes, carries, or has on board of any such vessel any nitroglycerin, dynamite, or any other explosive article or compound, or any vitriol or like acids, or gunpowder, except for the ship's use, or any article or number of articles, whether as a cargo or ballast, which, by reason of the nature or quantity or mode of storage thereof, shall, either singly or collectively, be likely to endanger the health or lives of the passengers or the safety of the vessel, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on section 171 of title 46, U.S.C., 1940 ed., Shipping (Aug. 2, 1882, ch. 374, § 8, 22 Stat. 189).

Words "except as otherwise expressly provided by law" were inserted to remove obvious inconsistency between sections 831–835 of this title, section 170 of title 46, U.S.C., 1940 ed., Shipping, and this section.

Words "shall be deemed guilty of a misdemeanor and" were omitted because designation of the offense as a misdemeanor is unnecessary in view of definitive section 1 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CROSS REFERENCES

Regulations for carriage of explosives, see section 170 of Title 46, Shipping.

Vessels carrying explosives and steerage passengers, fine as lien, see section 3620 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3620 of this title.

§ 2279. Boarding vessels before arrival

Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined not more than $200 or imprisoned not more than six months, or both.

The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him taken before any committing magistrate, to be dealt with according to law.

(June 25, 1948, ch. 645, 62 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on section 708 of title 46, U.S.C., 1940 ed., Shipping (R.S. § 4606).

"Law enforcement officer" was substituted for "constable or police officer" and "committing magistrate" for "justice of the peace." The phraseology used in the statute was archaic. It originated when the government had few law enforcement officers and magistrates of its own.

References to specific sections were made to read: "according to law" to achieve brevity.

Mandatory punishment provision was rephrased in the alternative.

The words "without permission of the master" were deleted to remove an inconsistency with the provisions of section 163 of title 46, U.S.C., 1940 ed., and customs regulations. Customs regulations, 1943, section 4.1c, prohibit any person "with or without consent of the master" from boarding vessel, with specific enumerated exceptions. Said section 163 prescribes a "penalty of not more than $100 or imprisonment not to exceed six months, or both" for violating regulations. The revised section increases the fine from $100 to $200 for boarding the vessel "with the consent of the master."

Minor changes were made in phraseology.

CROSS REFERENCES

Exceptions as to vessels in certain coastwise trade, or to seamen entitled to participate in profits, see section 544 of Title 46, Shipping.

Master forbidden to allow other than certain persons to come on board or leave vessel until all passengers have been landed, see section 158 of Title 46.

Violation of regulations governing boarding of vessels before inspection, see section 163 of Title 46.

CHAPTER 113—STOLEN PROPERTY

Sec.
2311. Definitions.
2312. Transportation of stolen vehicles.
2313. Sale or receipt of stolen vehicles.
2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting.
2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps.
2316. Transportation of cattle.
2317. Sale or receipt of cattle.
2318. Transportation, sale, or receipt of phonograph records bearing forged or counterfeit labels.

AMENDMENTS

1962—Pub. L. 87-773, § 2, Oct. 9, 1962, 76 Stat. 775, added item 2318.

1961—Pub. L. 87-371, § 4, Oct. 4, 1961, 75 Stat. 802, inserted "fraudulent State tax stamps," in item 2314, and substituted "moneys, or fraudulent State tax stamps" for "or monies" in item 2315.

CROSS REFERENCES

Baggage, express and freight; thefts and other depredations including transportation of money or goods stolen in transit, see section 659 of this title.

§ 2311. Definitions

As used in this chapter:

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air;

"Cattle" means one or more bulls, steers, oxen, cows, heifers, or calves, or the carcass or carcasses thereof;

"Money" means the legal tender of the United States or of any foreign country, or any counterfeit thereof;

"Motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails;

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"Value" means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

(June 25, 1948, ch. 645, 62 Stat. 805; Oct. 4, 1961, Pub. L. 87-371, § 1, 75 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 408, 414(b), (c), 417, 419a(a) (Oct. 29, 1919, ch. 89, § 2(a), 41 Stat. 324; May 22, 1934, ch. 333, §§ 2(b), (c), 5, 48 Stat. 794, 795; Aug. 3, 1939, ch. 413, § 3, 53 Stat. 1178; Aug. 8, 1941, ch. 366, § 2(a), 55 Stat. 631; Sept. 24, 1945, ch. 383, § 1, 59 Stat. 536).

The definitive provisions in each of said sections were separated therefrom and consolidated into this one section defining terms used in this chapter.

The definitions of "interstate or foreign commerce", contained in said section 408 and in sections 414(a) and 419a(b) of title 18, U.S.C., 1940 ed., are incorporated in section 10 of this title.

Other provisions of section 408 of title 18, U.S.C., 1940 ed., are incorporated in sections 2312 and 2313 of this title.

In the definition of "motor vehicle", words "designed for running on land but not on rails" were substituted for "not designed for running on rails" so as to conform with the ruling in the case of *McBoyle* v. *U.S.* (1931, 51 S. Ct. 340, 283, U. S. 25, 75 L. Ed. 816), in which the Supreme Court held that "vehicle" is limited to vehicles running on land and that motor vehicle does not include an airplane.

In the paragraph defining "value" which came from said section 417 of title 18, U.S.C., 1940 ed., words "In the event that a defendant is charged in the same indictment with two or more violations of sections 413-419 of this title, then" were omitted and the same meaning was preserved by the substitution of the words "a single" for the word "such."

Minor changes were made in phraseology.

AMENDMENTS

1961—Pub. L. 87-371 inserted the definition of tax stamp.

§ 2312. Transportation of stolen vehicles

Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 806.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408 (Oct. 29, 1919, ch. 89, §§ 1, 3, 5, 41 Stat. 324, 325; Sept. 24, 1945, ch. 383, §§ 2, 3, 59 Stat. 536).

The first sentence of said section 408, providing the short title "An Act to punish the transportation of

stolen motor vehicles or aircraft in interstate or foreign commerce," and derived from section 1 of said act of October 29, 1919, as amended, was omitted as not appropriate in a revision.

Definitions of "aircraft," "motor vehicle," and "interstate or foreign commerce," which constituted the second sentence of said section 408 of title 18, U.S.C., 1940 ed., and were derived from section 2 of said act of October 29, 1919, as amended, are incorporated in sections 10 and 2311 of this title.

Provision relating to receiving or selling stolen aircraft or motor vehicles, which was derived from section 4 of the act of October 29, 1919, as amended, is incorporated in section 2313 of this title.

Venue provision, which was derived from section 5 of the act of October 29, 1919, was omitted as unnecessary, being covered by section 3237 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

§ 2313. Sale or receipt of stolen vehicles

Whoever receives, conceals, stores, barters, sells, or disposes of any motor vehicle or aircraft, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 806.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 408 (Oct. 29, 1919, ch. 89, § 4, 41 Stat. 325; Sept. 24, 1945, ch. 383, §§ 2, 3, 59 Stat. 536).

Section constitutes the fourth sentence of said section 408 of title 18, U.S.C., 1940 ed.

Definitions of "aircraft," "motor vehicle," and "interstate or foreign commerce," which constituted the second sentence of said section 408, are incorporated in sections 10 and 2311 of this title.

The third sentence of said section 408, relating to transporting stolen aircraft or motor vehicles, is incorporated in section 2312 of this title.

The first sentence of said section 408, providing the short title, and the fifth sentence thereof, relating to venue, were omitted. (See reviser's note under section 2312 of this title.)

Minor changes were made in phraseology.

Cross References

Venue of offense involving more than one district, see section 3237 of this title.

§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

(June 25, 1948, ch. 645, 62 Stat. 806; May 24, 1949, ch. 139, § 45, 63 Stat. 96; July 9, 1956, ch. 519, 70 Stat. 507; Oct. 4, 1961, Pub. L. 87-371, § 2, 75 Stat. 802; Sept. 28, 1968, Pub. L. 90-535, 82 Stat. 885.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., §§ 413, 415, 418, 418a, 419 (May 22, 1934, ch. 333, §§ 1, 3, 6, 48 Stat. 794, 795; May 22, 1934, ch. 333, § 7, as added Aug. 3, 1939, ch. 413, § 5, 53 Stat. 1179; May 22, 1934, ch. 333, § 7, renumbered § 8 by Aug. 3, 1939, ch. 413, § 6, 53 Stat. 1179; Aug. 3, 1939, ch. 413, §§ 1, 4, 5, 53 Stat. 1178, 1179).

Section consolidates sections 413, 415, 417, 418, 418a, and 419 of title 18, U.S.C., 1940 ed.

Words "or with intent to steal or purloin, knowing the same to have been so stolen, converted, or taken" were omitted as surplusage, since property so "taken" is "stolen," and insertion of word "knowingly" after "Whoever" at beginning of section renders such omission possible.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Section 413 of title 18, U.S.C., 1940 ed., providing the short title "National Stolen Property Act," was omitted as not appropriate in a revision.

Section 414 of title 18, U.S.C., 1940 ed., containing definitions of "interstate or foreign commerce," "securities," and "money," is incorporated in sections 10 and 2311 of this title.

Section 417 of title 18, U.S.C., 1940 ed., relating to indictments and determination of "value" of goods, wares, merchandise, securities, and money referred to in indictments, is also incorporated in section 2311 of this title.

Section 418 of title 18, U.S.C., 1940 ed., relating to venue, was omitted as completely covered by section 3237 of this title.

Section 418a of title 18, U.S.C., 1940 ed., relating to conspiracy, was omitted as covered by section 371 of this title, the general conspiracy section.

Section 419 of title 18, U.S.C., 1940 ed., providing that nothing contained in the National Stolen Property Act should be construed to repeal, modify, or amend any part of the National Motor Vehicle Theft Act, was omitted as unnecessary, in view of this revision and reenactment of the provisions of the latter act (sections 10, 2311-2313 of this title).

Changes were made in phraseology and arrangement.

1949 ACT

This amendment [see section 45] restates and clarifies the first paragraph of section 2314 of title 18, U.S.C., to conform to the original law upon which the section is based.

AMENDMENTS

1968—Pub. L. 90-535 prohibited transportation with unlawful or fraudulent intent in interstate or foreign commerce of traveler's checks bearing forged countersignatures.

1961—Pub. L. 87-371 inserted "or tax stamps" following "securities" in the third paragraph and following "security" in the fourth paragraph, and "fraudulent State tax stamps," in the catchline.

1956—Act July 9, 1956, inserted after first par., paragraph relating to interstate transportation of persons in schemes to defraud.

1949—Act May 24, 1949, substituted in first par. "knowing the same to have been stolen, converted or taken by fraud" for "theretofore stolen, converted, or taken by fraud".

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

§ 2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps

Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken; or

Whoever receives, conceals, stores, barters, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barters, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government or by a bank or corporation of any foreign country.

(June 25, 1948, ch. 645, 62 Stat. 806; Oct. 4, 1961, Pub. L. 87-371, § 3, 75 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 416 (May 22, 1934, ch. 333, § 4, 48 Stat. 795; Aug. 3, 1939, ch. 413, § 2, 53 Stat. 1178).

(See reviser's notes under sections 10, 2311 and 2314 of this title for explanation of consolidation or omission of other sections of title 18, U.S.C., 1940 ed., which were derived from the National Stolen Property Act.)

Minor changes were made in phraseology.

AMENDMENTS

1961—Pub. L. 87-371 inserted "or tax stamps" following "securities", wherever appearing, in the second paragraph, and "or tax stamp" following "security", wherever appearing, in the third paragraph, and substituted "moneys, or fraudulent State tax stamps" for "or monies" in the catchline.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

§ 2316. Transportation of cattle

Whoever transports in interstate or foreign commerce any cattle, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 419b, 419d (Aug. 18, 1941, ch. 366, §§ 3, 5, 55 Stat. 631).

This section consolidates sections 419b and 419d of title 18, U.S.C., 1940 ed.

Definition of "cattle", contained in section 419a(a) of title 18, U.S.C., 1940 ed., is incorporated in section 2311 of this title.

Definition of "interstate or foreign commerce", constituting section 419a(b) of title 18, U.S.C., 1940 ed., is incorporated in section 10 of this title.

The venue provision of said section 419d of title 18, U.S.C., 1940 ed., was omitted as completely covered by section 3237 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

§ 2317. Sale or receipt of cattle

Whoever receives, conceals, stores, barters, buys, sells, or disposes of any cattle, moving in or constituting a part of interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 419c, 419d (Aug. 18, 1941, ch. 366, §§ 4, 5, 55 Stat. 632).

Definitions of "cattle" and "interstate or foreign commerce", contained in section 419a of title 18,

U.S.C., 1940 ed., are incorporated in sections 10 and 2311 of this title.

Venue provision of said section 419d of title 18, U.S.C., 1940 ed., was omitted as completely covered by section 3237 of this title.

Minor changes were made in phraseology.

§ 2318. Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels

Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited, shall be fined not more than $25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than $50,000 or imprisoned not more than two years, or both, for any subsequent offense.

(Added Pub. L. 87-773, § 1, Oct. 9, 1962, 76 Stat. 775, and amended Pub. L. 93-573, title I, § 103, Dec. 13, 1974, 88 Stat. 1873.)

Amendment Effective January 1, 1978

Pub. L. 94-553, title I, § 111, Oct. 19, 1976, 90 Stat. 2600, amended section effective Jan. 1, 1978. As so amended, section reads as follows:

"(a) Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than $25,000 or imprisoned for not more than two years, or both, for any subsequent offense.

"(b) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.

"(c) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a)."

Amendments

1974—Pub. L. 93-573 substituted "not more than $25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than $50,000 or imprisoned not more than 2 years, or both, for any subsequent offense" for "not more than $1,000 or imprisoned not more than one year or both".

CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

Sec.
2381. Treason.
2382. Misprision of treason.
2383. Rebellion or insurrection.
2384. Seditious conspiracy.
2385. Advocating overthrow of Government.
2386. Registration of certain organizations.
2387. Activities affecting armed forces generally.
2388. Activities affecting armed forces during war.
2389. Recruiting for service against United States.
2390. Enlistment to serve against United States.
2391. Temporary extension of section 2388.

Amendments

1953—Act June 30, 1953, ch. 175, § 5, 67 Stat. 134, added item 2391.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 22 sections 1641k, 1642h; title 42 section 402.

§ 2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 807.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 1, 2 (Mar. 4, 1909, ch. 321, §§ 1, 2, 35 Stat. 1088).

Section consolidates sections 1 and 2 of title 18, U.S.C., 1940 ed.

The language referring to collection of the fine was omitted as obsolete and repugnant to the more humane policy of modern law which does not impose criminal consequences on the innocent.

The words "every person so convicted of treason" were omitted as redundant.

Minor change was made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Bail in capital cases, power to take, see section 3141 of this title.

Counsel and witnesses in capital cases, see section 3005 of this title.

Definition and proof of treason, see Const. Art. 3, § 3, cl. 1.

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 1901, 2071, 2385, and 2387 of this title.

Extradition—

State, territory, or possession into extraterritorial jurisdiction of United States, see section 3183 of this title.

State or territory to State, district or territory, see section 3182 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Grand jury indictment for capital crimes, see Const. Amend. 5.

Indictment and list of jurors and witnesses for prisoner in capital cases, see section 3432 of this title.

National Service Life Insurance, forfeiture of rights to insurance on account of treason, see section 711 of Title 38, Veterans' Benefits.

Officers aiding importation of treasonous books and articles, see section 552 of this title.

Punishment of treason, power of Congress to declare, see Const. Art. 3, § 3, cl. 2.

United States nationality as lost by committing any act of treason, see sections 1481 to 1489 of Title 8, Aliens and Nationality.

Writings advocating treason declared nonmailable, see section 1717 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Bail, see rule 46, Appendix to this title.

Indictment, see rule 7.

Stay of execution and relief pending review, see rule 38.

Trial jurors, peremptory challenges, see rule 24.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined not more than $1,000 or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 3 (Mar. 4, 1909, ch. 321, § 3, 35 Stat. 1088).

Mandatory punishment provision was rephrased in the alternative.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Misprision of felony, see section 4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 4 (Mar. 4, 1909, ch. 321, § 4, 35 Stat. 1088).

Word "moreover" was deleted as surplusage and minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Disqualification as officers or electors of persons who have engaged in insurrection or rebellion and removal of disability, see Const. Amend. 14, § 3.

Federal retirement benefits, forfeiture upon conviction of offenses under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Officers aiding importation of books and articles containing matter advocating insurrection against the United States, see section 552 of this title.

Writings advocating insurrection declared nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1481; title 38 section 3505.

§ 2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 808; July 24, 1956, ch. 678, § 1, 70 Stat. 623.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 6 (Mar. 4, 1909, ch. 321, § 6, 35 Stat. 1089).

AMENDMENTS

1956—Act July 24, 1956, substituted "$20,000" for "$5,000", and "twenty years" for "six years".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act July 24, 1956, provided that the amendments to this section and section 2385 of this title by such act July 24, 1956, shall be applicable only with respect to offenses committed on and after July 24, 1956.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Alien advocates of overthrow of government, exclusion of, see section 1251 of Title 8, Aliens and Nationality.

Conspiracy to commit offense or to defraud United States or to impede or injure officer, see sections 371 and 372 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Letters and writings containing matter advocating forcible resistance to any law of United States as nonmailable, see section 1717 of this title.

Officers aiding importation of books and articles containing matter advocating forcible resistance to any law of the United States, see section 552 of this title.

United States nationality as lost by attempting by force to overthrow or bearing arms against the United States, see sections 1481 to 1489 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 sections 1251, 1481; title 38 section 3505.

§ 2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

(June 25, 1948, ch. 645, 62 Stat. 808; July 24, 1956, ch. 678, § 2, 70 Stat. 623; June 19, 1962, Pub. L. 87-486, 76 Stat. 103.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 10, 11, 13 (June 28, 1940, ch. 439, title I, §§ 2, 3, 5, 54 Stat. 670, 671).

Section consolidates sections 10, 11, and 13 of title 18, U.S.C., 1940 ed. Section 13 of title 18, U.S.C., 1940 ed., which contained the punishment provisions applicable to sections 10 and 11 of title 18, U.S.C., 1940 ed., was combined with section 11 of title 18, U.S.C., 1940 ed., and added to this section.

In first paragraph, words "the Government of the United States or the government of any State, Territory, District or possession thereof, or the government of any political subdivision therein" were substituted for "any government in the United States".

In second and third paragraphs, word "such" was inserted after "any" and before "government", and words "in the United States" which followed "government" were omitted.

In view of these changes, the provisions of subsection (b) of section 10 of title 18, U.S.C., 1940 ed., which defined the term "government in the United States" were omitted as unnecessary.

Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general conspiracy provision, incorporated in section 371 of this title. (See reviser's note under that section.)

Words "upon conviction thereof" which preceded "be fined" were omitted as surplusage, as punishment cannot be imposed until a conviction is secured.

The phraseology was considerably changed to effect consolidation but without any change of substance.

AMENDMENTS

1962—Pub. L. 87-486 defined the terms "organizes" and "organize".

1956—Act July 24, 1956, substituted "$20,000" for "$10,000", and "twenty years" for "ten years" in the paragraph prescribing penalties applicable to advocating overthrow of government and added provisions relating to conspiracy to commit any offense named in this section.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 24, 1956, as applicable only with respect to offenses committed on and after July 24, 1956, see Effective Date of 1956 Amendment note under section 2384 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Alien advocates of overthrow of government, exclusion of, see section 1251 of Title 8, Aliens and Nationality.

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 1901, 2071, 2381, and 2387 of this title.

Disqualification from holding public office of trust or profit under Guam government, see section 1421b of Title 48, Territories and Insular Possessions.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section see section 3505 of Title 38, Veterans' Benefits.

United States nationality as lost by attempting by force to overthrow or bearing arms against the United States, see sections 1481 to 1489 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1481; title 38 section 3505.

§ 2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General" means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B)(3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the

organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(l) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 14–17 (Oct. 17, 1940, ch. 897, §§ 1–4, 54 Stat. 1201–1204).

Section consolidates sections 14–17 of title 18, U.S.C., 1940 ed., as subsections (a), (b), (c), and (d), respectively, of this section, with necessary changes of phraseology and translation of section references.

Words "upon conviction" which preceded "be subject" were omitted as surplusage, as punishment cannot otherwise be imposed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 612.

§ 2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

(June 25, 1948, ch. 645, 62 Stat. 811; May 24, 1949, ch. 139, § 46, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 9, 11, 13 (June 28, 1940, ch. 439, title I, §§ 1, 3, 5, 54 Stat. 670, 671).

Section consolidates sections 9, 11, and 13 of title 18, U.S.C., 1940 ed., with only such changes of phraseology as were necessary to effect consolidation.

The revised section extends the provisions so as to include the Coast Guard Reserve in its coverage.

Words "upon conviction thereof" were omitted as unnecessary, as punishment cannot be imposed until conviction is secured.

Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general law incorporated in section 371 of this title. (See reviser's note under that section.)

Minor changes were made in arrangement and phraseology.

1949 ACT

This section [section 46] inserts the words, "Air Force," in subsection (b) of section 2387 of title 18, U.S.C., in view of the establishment in 1947 of this separate branch of the armed services.

AMENDMENTS

1949—Subsec. (b). Act May 24, 1949, made section applicable to the Air Force.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to

the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26, of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Such plan excepted from the transfer the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Disqualification from holding any office of honor, trust, or profit, additional grounds for, see sections 204, 592, 593, 1901, 2071, 2381, and 2385 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 2388. Activities affecting armed forces during war

(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in said subsection (a).

(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States.

(June 25, 1948, ch. 645, 62 Stat. 811.)

HISTORICAL AND REVISION NOTES

Based on sections 33, 34, 35, 37 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 3, 4, 5, 8, 40 Stat. 219; Mar. 3, 1921, ch. 136, 41 Stat. 1359; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79).

Sections 33, 34, 35, and 37 of title 50, U.S.C., 1940 ed., War and National Defense, were consolidated. Sections 34, 35, and 37 of title 50, U.S.C., 1940 ed., War and National Defense, are also incorporated in sections 791, 792, and 794 of this title, to which they relate.

Minor changes were made in phraseology.

REPEALS

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 133, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which had provided that this section should continue in force until six months after the termination of the National emergency proclaimed by 1950 Proc. No. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 2391 of this title.

REPEAL OF PRIOR EXTENSIONS OF WAR-TIME PROVISIONS

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, ch. 437, 66 Stat. 137, and Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717, 2391 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505.

§ 2389. Recruiting for service against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 811.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 7 (Mar. 4, 1909, ch. 321, § 7, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 2390. Enlistment to serve against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined $100 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 8 (Mar. 4, 1909, ch. 321, § 8, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 2391. Temporary extension of section 2388

The provisions of section 2388 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 2388 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

(Added June 30, 1953, ch. 175, § 6, 67 Stat. 134.)

REFERENCES IN TEXT

Section 1(a)(29) of the Emergency Powers Continuation Act. (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in text, formerly set out as a note under section 2388 of this title, was repealed by section 7 of act June 30, 1953.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in the text, is an erroneous citation. It probably should refer to Proc. 2914 which is set out as a note preceding section 1 of Appendix to title 50, War and National Defense.

CHAPTER 117—WHITE SLAVE TRAFFIC

Sec.
2421. Transportation generally.
2422. Coercion or enticement of female.
2423. Coercion or enticement of minor female.
2424. Filing factual statement about alien female.

§ 2421. Transportation generally

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812; May 24, 1949, ch. 139, § 47, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 397, 398, 401, 404 (June 25, 1910, ch. 395, §§ 1, 2, 5, 8, 36 Stat. 825-827).

Section consolidates sections 397, 398, 401, and 404 of title 18, U.S.C., 1940 ed.

Section 397 of title 18, U.S.C., 1940 ed., containing a definition of the terms "interstate commerce" and "foreign commerce" was omitted as unnecessary in view of the definition of those terms in section 10 of this title.

Section 401 of title 18, U.S.C., 1940 ed., prescribing venue was omitted as unnecessary in view of section 3237 of this title.

Section 403 of title 18, U.S.C., 1940 ed., was omitted. No definition of "Territory" is necessary to the revised section as it is phrased. Construction therein of "person" is covered by section 1 of title 1, U.S.C., 1940 ed., General Provisions, as amended. Last paragraph of said section relating to construction of this chapter was omitted as surplusage.

Words "Possession of the United States" were inserted in three places in view of mission of said section 403 of title 18, U.S.C., 1940 ed., and, reference in that section to the Canal Zone is covered by those words. This

chapter applies to the Territory of Hawaii. (See *Sun Chong Lee* v. *United States*, C.C.A. Hawaii, 1942, 125 F. 2d 95.)

Section 404 of title 18, U.S.C., 1940 ed., containing the short title was omitted as not appropriate in a revision.

Reference to persons causing, procuring, aiding or assisting was deleted as unnecessary because such persons are made principals by section 2 of this title.

Words "and upon conviction thereof" were also deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Words "deemed guilty of a felony" were deleted as unnecessary in view of the definition of a felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Minor changes were also made in translations and phraseology.

1949 ACT

This section [section 47] corrects a typographical error in section 2421 of title 18, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, corrected spelling of "induce".

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961 of this title.

§ 2422. Coercion or enticement of female

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 399 (June 25, 1910, ch. 395, § 3, 36 Stat. 825).

Words "deemed guilty of a felony" were deleted as unnecessary in view of definition of felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Words "and on conviction thereof shall be" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

The references to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Words "Possession of the United States" were inserted twice. (See reviser's note under section 2421 of this title.)

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961 of this title.

§ 2423. Coercion or enticement of minor female

Whoever knowingly persuades, induces, entices, or coerces any woman or girl who has not attained her eighteenth birthday, to go from one place to another by common carrier, in interstate commerce or within the District of Columbia or any Territory or Possession of the United States, with intent that she be induced or coerced to engage in prostitution, debauchery or other immoral practice, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 400 (June 25, 1910, ch. 395, § 4, 36 Stat. 826).

Words "deemed guilty of a felony" were deleted as unnecessary in view of definition of felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Words "and on conviction thereof shall be" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Words "Possession of the United States" were inserted twice. (See reviser's note under section 2421 of this title.)

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961 of this title.

§ 2424. Filing factual statement about alien female

(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppression of the white-slave traffic, shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person; and

Whoever fails within thirty days after commencing to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she has entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien

woman or girl with the Commissioner of Immigration and Naturalization; or

Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country—

Shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section.

(June 25, 1948, ch. 645, 62 Stat. 813; Oct. 15, 1970, Pub. L. 91-452, title II, § 226, 84 Stat. 930.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 402(2), (3) (June 25, 1910, ch. 395, § 6, 36 Stat. 826).

First paragraph of section 402 of title 18, U.S.C., 1940 ed., was omitted from this section and recommended for transfer to Title 8, Aliens and Nationality.

Words "shall be deemed guilty of a misdemeanor" were omitted as unnecessary in view of the definition of a misdemeanor in section 1 of this title. (See reviser's note under section 212 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-452 substituted provisions that no information contained in the statement or any evidence directly or indirectly derived from such information be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this section, for provisions that no person be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, etc., truthfully reported in his statement.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Importation of aliens for immoral purposes as forbidden, see section 1328 of Title 8, Aliens and Nationality.

International agreement signed May 18, 1904, for the suppression of the white-slave traffic is set forth, with the adherence of the United States thereto, in 35 Stat. 1979.

Prevention of transportation in foreign commerce of alien women and girls under international agreement, see section 1557 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1961 of this title.

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.
2510. Definitions.
2511. Interception and disclosure of wire or oral communications prohibited.
2512. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited.
2513. Confiscation of wire or oral communication intercepting devices.
[2514. Repealed.]
2515. Prohibition of use as evidence of intercepted wire or oral communications.
2516. Authorization for interception of wire or oral communications.
2517. Authorization for disclosure and use of intercepted wire or oral communications.
2518. Procedure for interception of wire or oral communications.
2519. Reports concerning intercepted wire or oral communications.
2520. Recovery of civil damages authorized.

AMENDMENTS

1970—Pub. L. 91-452, title II, § 227(b), Oct. 15, 1970, 84 Stat. 930, struck out item 2514 "Immunity of witnesses", which section was repealed four years following the sixtieth day after Oct. 15, 1970.

1968—Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 212, added chapter 119 and items 2510 to 2520.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 3795; title 47 section 605.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 23-556 of the District of Columbia Code.

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) "State" means any State of the United States, the District of Columbia, the Com-

monwealth of Puerto Rico, and any territory or possession of the United States;

(4) "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means—

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications;

(10) "communication common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of title 47 of the United States Code; and

(11) "aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 212.)

CONGRESSIONAL FINDINGS

Section 801 of Pub. L. 90-351 provided that:

"On the basis of its own investigations and of published studies, the Congress makes the following findings:

"(a) Wire communications are normally conducted through the use of facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications. There has been extensive wiretapping carried on without legal sanctions, and without the consent of any of the parties to the conversation. Electronic, mechanical, and other intercepting devices are being used to overhear oral conversations made in private, without the consent of any of the parties to such communications. The contents of these communications and evidence derived therefrom are being used by public and private parties as evidence in court and administrative proceedings, and by persons whose activities affect interstate commerce. The possession, manufacture, distribution, advertising, and use of these devices are facilitated by interstate commerce.

"(b) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of interstate commerce, it is necessary for Congress to define on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized, to prohibit any unauthorized interception of such communications, and the use of the contents thereof in evidence in courts and administrative proceedings.

"(c) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

"(d) To safeguard the privacy of innocent persons, the interception of wire or oral communications where none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurances that the interception is justified and that the information obtained thereby will not be misused."

NATIONAL COMMISSION FOR THE REVIEW OF FEDERAL AND STATE LAWS RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE

Section 804 of Pub. L. 90-351, as amended by Pub. L. 91-452, title XII, § 1212, Oct. 15, 1970, 84 Stat. 961; Pub. L. 91-644, title VI, § 20, Jan. 2, 1971, 84 Stat. 1892; Pub. L. 93-609, §§ 1 to 4, Jan. 2, 1975, 88 Stat. 1972, 1973; Pub. L. 94-176, Dec. 23, 1975, 89 Stat. 1031, established a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, provided for its membership, Chairman, powers and functions, compensation and allowances, required the Commission to study and review the operation of the provisions of this chapter to determine their effectiveness and to submit interim reports and a final report to the President and to the Congress of its findings and recommendations on or before Apr. 30, 1976, and also provided for its termination sixty days after submission of the final report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3504 of this title.

§ 2511. Interception and disclosure of wire or oral communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other

device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided,* That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143;[1] 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 213, and amended Pub. L. 91-358, title II, § 211(a), July 29, 1970, 84 Stat. 654.)

AMENDMENTS

1970—Subsec. (2)(a). Pub. L. 91-358 designated existing provisions as cl. (i), and added cl. (ii).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 901(a) of Pub. L. 91-358 provided in part that the amendment by Pub. L. 91-358 shall take effect on the first day of the seventh calendar month which begins after July 29, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2513 of this title.

§ 2512. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who willfully—

[1] So in original. Probably should be 1103.

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of—

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire or oral communications,

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for—

(a) a communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, in the normal course of the communications common carrier's business, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 214.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2513 of this title.

§ 2513. Confiscation of wire or oral communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 215.)

[§ 2514. Repealed. Pub. L. 91-452, title II, § 227(a), Oct. 15, 1970, 84 Stat. 930]

Section, Pub. L. 90-351, title II, § 802, June 19, 1968, 82 Stat. 216, provided for immunity of witnesses giving testimony or producing evidence under compulsion in Federal grand jury or court proceedings. Subject matter is now covered in sections 6002 and 6003 of this title.

EFFECTIVE DATE OF REPEAL

Sections 227(a), 260 of Pub. L. 91-452 provided for repeal of this section effective four years following sixtieth day after date of enactment of Pub. L. 91-452, which was approved Oct. 15, 1970, such repeal not affecting any immunity to which any individual was entitled under this section by reason of any testimony or other information given before such date. See section 260 of Pub. L. 91-452, set out as a note under section 6001 of this title.

§ 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 216.)

§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdic-

tion for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential assassinations, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), sections 2314 and 2315 (interstate transportation of stolen property), section 1963 (violations with respect to racketeer influenced and corrupt organizations) or section 351 (violations with respect to congressional assassination, kidnaping, and assault);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title; or

(g) any conspiracy to commit any of the foregoing offenses.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire or oral communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 216, and amended Pub. L. 91-452, title VIII, § 810, title IX, § 902(a), title XI, § 1103, Oct. 15, 1970, 84 Stat. 940, 947, 959; Pub. L. 91-644, title IV, § 16, Jan. 2, 1971, 84 Stat. 1891.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (1)(a), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables volume.

AMENDMENTS

1971—Par. (1)(c). Pub. L. 91-644 added provision authorizing interception of communications with respect to section 351 offense (violations with respect to congressional assassination, kidnaping, and assault).

1970—Par. (1)(c). Pub. L. 91-452 added provisions authorizing applicability to sections 844(d), (e), (f), (g), (h), or (i), 1511, 1955, and 1963 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2514, 2518 of this title.

§ 2517. Authorization for disclosure and use of intercepted wire or oral communications

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication,

or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 217, and amended Pub. L. 91-452, title IX, § 902(b), Oct. 15, 1970, 84 Stat. 947.)

AMENDMENTS

1970—Par. (3). Pub. L. 91-452 substituted "proceeding held under the authority of the United States or of any State or political subdivision thereof" for "criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2518 of this title.

§ 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

(5) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists with respect to conspiratorial activities threatening the national security interest or to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 218, and amended Pub. L. 91-358, title II, § 211(b), July 29, 1970, 84 Stat. 654.)

AMENDMENTS

1970—Subsec. (4). Pub. L. 91-358 added the provision that, upon the request of the applicant, an order authorizing the interception of a wire or oral communication direct that a communication common carrier, landlord, custodian, or other person furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services provided.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 901(a) of Pub. L. 91-358 provided in part that the amendment by Pub. L. 91-358 shall take effect on the first day of the seventh calendar month which begins after July 29, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2516, 2519 of this title.

§ 2519. Reports concerning intercepted wire or oral communications

(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(a) the fact that an order or extension was applied for;

(b) the kind of order or extension applied for;

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and fre-

quency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such reports shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 222.)

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-555 of the District of Columbia Code.

§ 2520. Recovery of civil damages authorized

Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and (2) be entitled to recover from any such person—

(a) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(b) punitive damages; and

(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 223, and amended Pub. L. 91-358, title II, § 211(c), July 29, 1970, 84 Stat. 654.)

AMENDMENTS

1970—Pub. L. 91-358 substituted provisions that a good faith reliance on a court order or legislative authorization constitute a complete defense to any civil or criminal action brought under this chapter or under any other law, for provisions that a good faith reliance on a court order or on the provisions of section 2518(7) of this chapter constitute a complete defense to any civil or criminal action brought under this chapter.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 901(a) of Pub. L. 91-358 provided in part that the amendment by Pub. L. 91-358 shall take effect on the first day of the seventh calendar month which begins after July 29, 1970.

PART II—CRIMINAL PROCEDURE

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AMENDMENTS

1975—Pub. L. 93-619, title I, § 102, Jan. 3, 1975, 88 Stat. 2086, added chapter 208.

1970—Pub. L. 91-452, title I, § 101(b), Oct. 15, 1970, 84 Stat. 926, added item 216.

1968—Pub. L. 90-578, title III, § 301(c), Oct. 17, 1968, 82 Stat. 1115, substituted "Trial by United States magistrates" for "Trial by commissioners" in the heading for chapter 219.

1966—Pub. L. 89-465, § 5(e)(2), June 22, 1966, 80 Stat. 217, substituted "207. Release" for "207. Bail".

CHAPTER 201—GENERAL PROVISIONS

Sec.	
3001.	Procedure governed by rules; scope, purpose and effect; definition of terms; local rules; forms—Rule.
3002.	Courts always open—Rule.
3003.	Calendars—Rule.
3004.	Decorum in court room—Rule.
3005.	Counsel and witnesses in capital cases.
3006.	Assignment of counsel—Rule.
3006A.	Adequate representation of defendants.
3007.	Motions—Rule.
3008.	Service and filing of papers—Rule.
3009.	Records—Rule.
3010.	Exceptions unnecessary—Rule.
3011.	Computation of time—Rule.
3012.	Orders respecting persons in custody.

AMENDMENTS

1964—Pub. L. 88-455, § 4, Aug. 20, 1964, 78 Stat. 554, inserted item 3006A.

LAW ENFORCEMENT ASSISTANCE ACT OF 1965

Pub. L. 89-197, §§ 1 to 11, Sept. 22, 1965, 79 Stat. 828, as amended by Pub. L. 89-798, Nov. 8, 1966, 80 Stat. 1503, was repealed by Pub. L. 90-351, title I, § 405, June 19, 1968, 82 Stat. 204, subject to the provisions of section 3745 of Title 42, The Public Health and Welfare, and is now covered by section 3701 et seq. (chapter 46) of Title 42. Such Act had provided for grants and contracts for improvement of quality of state and local personnel through professional training; grants and contracts to improve state and local law enforcement techniques; delegation and redelegation of powers; contributions to program by recipients, rules and regulations, necessary stipends, and allowances; studies by Attorney General and technical assistance to states; prohibition against control over local agencies; advisory committees, compensation, and expenses; term of program; appropriations; and reports to President and Congress.

COORDINATION OF FEDERAL LAW ENFORCEMENT AND CRIME PREVENTION PROGRAMS

Designation of Attorney General to coordinate federal law enforcement and crime prevention program, see Ex. Ord. No. 11396, Feb. 7, 1968, 33 F.R. 2689, set out as a note preceding section 1 of this title.

§ 3001. Procedure governed by rules; scope, purpose and effect; definition of terms; local rules; forms—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Scope, rule 1.
Purpose and construction, rule 2.
Proceedings to which rules apply, rules 54 and 59.
Definition, rule 54(c).
Rules of District Courts and Circuit Courts of Appeal, rule 57.
Forms, rule 58.
Effective date, rule 59.
Citation of rule, rule 60.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3002. Courts always open—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Business hours, rule 56.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3003. Calendars—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Preference to criminal cases, rule 50.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3004. Decorum in court room—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Photographing or radio broadcasting prohibited, rule 53.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3005. Counsel and witnesses in capital cases

Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

(June 25, 1948, ch. 645, 62 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 563 (R.S. § 1034). Changes were made in phraseology.

CROSS REFERENCES

Assistance of counsel, see Const. Amend. VI.
Compulsory process for obtaining witnesses in criminal prosecutions, see Const. Amend. VI.

§ 3006. Assignment of counsel—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Appointment by court, rule 44.
Accused to be informed of right to counsel, rules 5 and 44.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3006A. Adequate representation of defendants

(a) Choice of plan.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), or, (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal aid agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) Appointment of counsel.—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or ap-

proved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) Duration and substitution of appointments.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

(d) Payment for representation.—

(1) Hourly rate.—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

(2) Maximum amounts.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each proceeding in each court.

(3) Waiving maximum amounts.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

(4) Filing claims.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

(5) New trials.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(6) Proceeding before appellate courts.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(e) Services other than counsel.—

(1) Upon request.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(2) Without prior request.—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

(3) Maximum amounts.—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

(f) Receipt of other payments.—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(g) Discretionary appointments.—Any person subject to revocation of parole, in custody as a material witness, or seeking relief under section 2241, 2254, or 2255 of title 28 or section 4245 of title 18 may be furnished representation pursuant to the plan whenever the United States magistrate or the court determines that the interests of justice so require and such person is financially unable to obtain representation. Payment for such representation may be as provided in subsection (d) and (e).

(h) Defender organization.—

(1) Qualifications.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2) Types of defender organizations.—

(A) Federal Public Defender Organization.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the judicial council of the circuit for incompetency, misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the Judicial Council of the District and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, similarly as under title 28, United States Code, section 605, and subject to the conditions of that section, a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

(B) Community Defender Organization.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by group authorized by the plan

to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States,

(i) receive an initial grant for expenses necessary to establish the organization; and

(ii) in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

(i) Rules and reports.—Each district court and judicial council of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(j) Appropriations.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

(k) Districts included.—The term "district court" as used in this section includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code.

(*l*) Applicability in the District of Columbia.—The provisions of this Act, other than subsection (h) of section 1, shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(Added Pub. L. 88-455, § 2, Aug. 20, 1964, 78 Stat. 552 and amended Pub. L. 90-578, title III, § 301(a)(1), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 91-447, § 1, Oct. 14, 1970, 84 Stat. 916; Pub. L. 93-412, § 3, Sept. 3, 1974, 88 Stat. 1093.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h)(2)(A), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The provisions of this Act, other than subsection (h) of section 1, referred to in subsec. (*l*), probably means the provisions of this section, other than subsection (h) thereof.

AMENDMENTS

1974—Subsec. (*l*). Pub. L. 93-412 substituted "shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals", for "shall be applicable in the District of Columbia", and struck out provisions that the plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.

1970—Subsec. (a). Pub. L. 91-447, § 1(a), expanded coverage of district court plan for furnishing representation to financially disabled persons to include defendants charged with violation of probation, any person under arrest when such representation is required by law, any person who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief as provided in subsec. (g) of this section, and any person for whom the Sixth Amendment to the Constitution requires appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel, and required each plan to include a provision for participation by private attorneys in a substantial proportion of cases, as well as permitting attorneys to be furnished by bar, legal aid, or defender organizations in accordance with subsec. (h) of this section.

Subsec. (b). Pub. L. 91-447, § 1(a), provided for appointment of counsel from a bar association, legal aid agency, or defender organization as well as from a panel of attorneys approved by the court, expanded advice to defendant of right to appointment of counsel where defendant is charged with juvenile delinquency by the commission of an act which, if committed by an adult, would be a felony or misdemeanor or with violation of probation, and provided for appointment of counsel to be retroactive so as to include any representation furnished pursuant to the plan prior to appointment.

Subsec. (c). Pub. L. 91-447, § 1(a), expanded the scope of representation by appointed counsel to include ancillary matters appropriate to the proceedings.

Subsec. (d). Pub. L. 91-447, § 1(a), raised the rate of compensation not to exceed $30 per hour for time expended in court and $20 per hour for time reasonably expended out of court, increased the limit to $1,000 for each attorney in a case involving one or more alleged felonies and $400 for each attorney in a case in which one or more misdemeanors are charged, established a $1,000 maximum for each attorney in each court for cases on appeal and provided a $250 maximum for each attorney for representation in connection with a post-trial motion, probation revocation proceedings and matters covered by subsec. (g) such as parole revocation and collateral relief proceedings, provided for waiver of maximum amounts and payment in excess of those amounts for extended or complex representation upon approval of the chief judge of the circuit, provided for separate claims of compensation to be submitted to the appropriate court, thus a U.S. magistrate fixes compensation in cases before him, appellate court fixes compensation in cases before it and in all other instances claims are to be made to the district court, provided a court order granting a new trial is deemed to initiate a new case for the purpose of compensation, and facilitate appellate proceedings by allowing a defendant for whom counsel is appointed to appeal or petition for a writ of certiorari without prepayment of fees and cost of security therefore and without filing the affidavit required by section 1915(a).

Subsec. (e). Pub. L. 91-447, § 1(a), limited to $150, plus reasonable expenses, subject to later review and approval by the court, the cost of investigative, expert, or other services necessary for an adequate defense where these services are obtained without prior authorization because circumstances prevented counsel from securing prior court authorization, maintained existing limit on payment for authorized services at a $300 maximum but permitted waiver of that maximum if the court certifies that payment in excess of that limit is necessary to provide fair compensation,

and provided that the amount of any excess payment must be approved by the chief judge of the circuit.

Subsec. (f). Pub. L. 91-447, § 1(a), substantially reenacted subsec. (f).

Subsec. (g). Pub. L. 91-447, § 1(b), added subsec. (g). Former subsec. (g) was redesignated as subsec. (i).

Subsec. (h). Pub. L. 91-447, § 1(b), added subsec. (h). Former subsec. (h) was redesignated as subsec. (j).

Subsec. (i). Pub. L. 91-447, § 1(b), redesignated former subsec. (g) as subsec. (i).

Subsec. (j). Pub. L. 91-447, § 1(b), redesignated former subsec. (h) as subsec. (j).

Subsec. (k). Pub. L. 91-447, § 1(b), redesignated former subsec. (i) as subsec. (k).

Subsec. (*l*). Pub. L. 91-447, § 1(c), added subsec (*l*).

1968—Subsecs. (b)-(d). Pub. L. 90-578 substituted "United States magistrate" for "United States commissioner" wherever appearing.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93-412 provided in part that the amendment of subsec. (*l*) of this section by Pub. L. 93-412 shall take effect on Sept. 3, 1974.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91-447 provided that: "The amendments made by section 1 of this Act [amending this section] shall become effective one hundred and twenty days after the date of enactment [Oct. 14, 1970]."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

Section 1 of Pub. L. 88-455 provided: "That this Act [enacting this section and provisions set out as a note under this section] may be cited as the 'Criminal Justice Act of 1964.'"

POWER AND FUNCTION OF A UNITED STATES COMMISSIONER

Section 2 of Pub. L. 91-447 provided that: "A United States commissioner [now magistrate] for a district may exercise any power, function, or duty authorized to be performed by a United States magistrate under the amendments made by section 1 of this Act [amending this section] if such commissioner had authority to perform such power, function, or duty prior to the enactment of such amendments."

SUBMISSION OF PLANS

Section 3 of Pub. L. 88-455 directed each district court to submit a plan in accord with section 3006A of this title and the rules of the Judicial Conference of the United States to the judicial council of the circuit within 6 months from Aug. 20, 1964, further directed each judicial council to approve and send to the Administrative Office of the United States courts a plan for each district in its circuit within 9 months from Aug. 20, 1964, and also directed each district court and court of appeals to place its approved plan in operation within 1 year from Aug. 20, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162, 4214 of this title; title 28 section 753; title 42 section 3795.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 11-2604, 11-2605 of the District of Columbia Code.

§ 3007. Motions—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motions substituted for pleas in abatement and special pleas in bar, rule 12.

Form and contents, rule 47.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3008. Service and filing of papers—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Requirement and manner of service; notice of orders; filing papers, rule 49.

(June 25, 1948, ch. 645, 62 Stat. 815.)

§ 3009. Records—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Keeping of records by district court clerks and magistrates, rule 55.

(June 25, 1948, ch. 645, 62 Stat. 815; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(4), 82 Stat. 1115.)

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrates" for "commissioners".

§ 3010. Exceptions unnecessary—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Objections substituted for exceptions, rule 51.

(June 25, 1948, ch. 645, 62 Stat. 815.)

§ 3011. Computation of time—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Computation: enlargement; expiration of term; motions and affidavits; service by mail, rule 45.

(June 25, 1948, ch. 645, 62 Stat. 815.)

§ 3012. Orders respecting persons in custody

Prisoners or persons in custody shall be brought into court or returned on order of the Court or of the United States Attorney, for which no fee shall be charged and no writ required.

(June 25, 1948, ch. 645, 62 Stat. 815.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 605 (R.S. § 1030).

Changes of phraseology were made without change of substance.

CROSS REFERENCES

Collection of fees by marshal, see section 572 of Title 28, Judiciary and Judicial Procedure.

Compensation of clerks of district courts, see sections 604 and 751 of Title 28.

Expenses of marshals transporting prisoners, see section 567 of Title 28.

CHAPTER 203—ARREST AND COMMITMENT

Sec.
3041. Power of courts and magistrates.
3042. Extraterritorial jurisdiction.
3043. Security of the peace and good behavior.
3044. Complaint—Rule.
3045. Internal revenue violations.
3046. Warrants or summons—Rule.[1]
3047. Multiple warrants unnecessary.
3048. Commitment to another district; removal—Rule.

[1] So in original. Does not conform to section catchline.

Sec.
3049. Warrant for removal.
3050. Bureau of Prisons employees' powers.
[3051. Repealed.]
3052. Powers of Federal Bureau of Investigation.
3053. Powers of marshals and deputies.
3054. Officer's powers involving animals and birds.
3055. Officers' powers to suppress Indian liquor traffic.
3056. Secret Service powers.
3057. Bankruptcy investigations.
3058. Interned belligerent nationals.
3059. Rewards and appropriations therefor.
3060. Preliminary examination.
3061. Powers of postal personnel.

AMENDMENTS

1970—Pub. L. 91-375, § 6(j)(38)(B), Aug. 12, 1970, 84 Stat. 782, substituted "postal personnel" for "postal inspectors" in item 3061.

1968—Pub. L. 90-578, title III, § 303(b), Oct. 17, 1968, 82 Stat. 1118, struck from item 3060 which read "Preliminary examination—Rule" the reference to "Rule".

Pub. L. 90-560, § 5(b), Oct. 12, 1968, 82 Stat. 998, added item 3061.

1951—Act Oct. 31, 1951, ch. 655, § 56(f), 65 Stat. 729, repealed item 3051 reading "3051. Extradition agent's powers.".

CROSS REFERENCES

Arresting power of probation officer, see section 3653 of this title.

§ 3041. Power of courts and magistrates

For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate, or by any chancellor, judge of a supreme or superior court, chief or first judge of the common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released as provided in chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case.

A United States judge or magistrate shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest.

(June 25, 1948, ch. 645, 62 Stat. 815; June 22, 1966, Pub. L. 89-465, § 5(a), 80 Stat. 217; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(1), (3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 591 (R.S. § 1014; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956).

This section was completely rewritten to omit all provisions superseded by Federal Rules of Criminal Procedure, rules 3, 4, 5, 40 and 54(a) which prescribed the procedure for preliminary proceedings and examinations before United States judges and commissioners and for removal proceedings but not for preliminary examinations before State magistrates.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrate" and "magistrate" for "United States commissioner" and "commissioner", respectively.

1966—Pub. L. 89-465 substituted "or released as provided in chapter 207 of this title" for "or bailed".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-465 effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

CROSS REFERENCES

Arrests—
Power of probation officer, see section 3653 of this title.
Searches and seizures, issuance of warrant, see Const. Amend. 4.
Senators and Representatives as privileged from arrest in all cases, except treason, felony and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, see Const. Art. 1, § 6.

Bail—
Additional bail, see section 3143 of this title.
Appeal by United States, see section 3731 of this title.
Cases removed from State courts, see section 3144 of this title.
Conditions of allowance, rules by Supreme Court, see section 3772 of this title.
Excessive bail shall not be required, see Const. Amend. 8.
Obstructing justice by false bail, see section 1506 of this title.
Parties and witnesses, see section 3145 of this title.
Power of courts and magistrates, see section 3141 of this title.
Surrender by bail, see section 3142 of this title.

Extraterritorial jurisdiction, generally, see section 3042 of this title.

Jurisdiction and venue, see section 3231 et seq. of this title.

Juvenile delinquents, arrest, detention, and bail, see section 5035 of this title.

Magistrates, power to impose conditions of release, see section 636 of Title 28, Judiciary and Judicial Procedure.

United States defined, see section 5 of this title.

United States Magistrates, see section 631 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Bail, see rule 46, Appendix to this title.

Commitment of witnesses for failure to give bail, direction for taking depositions, see rule 15.

Commitment or continuation or alteration of bail pending sentence, see rule 32.

Commitment to another district; removal, see rule 40.

Complaint, see rule 3.

Criminal contempt, admission to bail, see rule 42.

Custody or bail, continuation pending filing of new indictment or information, see rule 12.

Proceedings before the United States Magistrates, see rule 5.

Secrecy of indictment pending defendant's custody or bail, see rule 6.

Stay of execution and relief pending review, see rule 38.

Transmission of bail when transfer ordered from the district or division for trial, see rule 21.

Warrant or summons upon complaint, see rule 4.

Warrant or summons upon indictment or information, see rule 9.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Appearance bond, see form 17, Appendix to this title.

Summons, see form 13.

Warrant for arrest of—

Defendant, see form 12.

Witness, see form 22.

Warrant of removal, see form 14.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3042, 3152, 3156 of this title; title 16 sections 916g, 990, 1031; title 26 section 5557.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1331 of the District of Columbia Code.

§ 3042. Extraterritorial jurisdiction

Section 3041 of this title shall apply in any country where the United States exercises extraterritorial jurisdiction for the arrest and removal therefrom to the United States of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States, and shall also apply throughout the United States for the arrest and removal therefrom to the jurisdiction of any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction, of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States in any country where it exercises extraterritorial jurisdiction.

Such fugitive first mentioned may, by any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction and agreeably to the usual mode of process against offenders subject to such jurisdiction, be arrested and imprisoned or admitted to bail, as the case may be, pending the issuance of a warrant for his removal, which warrant the principal officer or representative of the United States vested with judicial authority in the country where the fugitive shall be found shall seasonably issue, and the United States marshal or corresponding officer shall execute.

Such marshal or other officer, or the deputies of such marshal or officer, when engaged in executing such warrant without the jurisdiction of the court to which they are attached, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safekeeping and the execution of the warrant.

(June 25, 1948, ch. 645, 62 Stat. 815.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662b (Mar. 22, 1934, ch. 73, § 1, 48 Stat. 454).

Words "crime or" before "offense" were omitted as unnecessary.

Words "and the Philippine Islands" were deleted in two places as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

Words "its Territories, Districts, or possessions, including the Panama Canal Zone or any other territory governed, occupied, or controlled by it" were omitted as covered by section 5 of this title defining the term "United States".

Minor changes were made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Habeas corpus, no right of appeal from final order in a proceeding to test the validity of a warrant of removal issued pursuant to this section, see section 2253 of Title 28, Judiciary and Judicial Procedure.

Provisional arrest, obtained by telegraph, see section 3187 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Non-application to extradition proceedings, see rule 54, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3187 of this title.

§ 3043. Security of the peace and good behavior

The justices or judges of the United States, the United States magistrates, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them.

(June 25, 1948, ch. 645, 62 Stat. 816; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(2), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on section 392 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 270, 36 Stat. 1163).

Minor changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrate" for "United States commissioner".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Federal Rules of Criminal Procedure not applicable to extradition proceedings, see rule 54, Appendix to this title.

Peace bonds, see rule 54.

§ 3044. Complaint—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Contents of complaint; oath, Rule 3.

(June 25, 1948, ch. 645, 62 Stat. 816.)

§ 3045. Internal revenue violations

Warrants of arrest for violations of internal revenue laws must be issued by United States magistrates upon the complaint of a United States attorney, assistant United States attorney, collector, or deputy collector of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States attorney.

(June 25, 1948, ch. 645, 62 Stat. 816; Oct. 17, 1968, Pub. L. 95-578, title III, § 301(a)(2), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 594 (May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956).

Minor changes were made in phraseology.

REFERENCES IN TEXT

The internal revenue laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrates" for "United States commissioners".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF OFFICES OF COLLECTOR AND DEPUTY COLLECTOR OF INTERNAL REVENUE

The offices of Collector and Deputy Collector of Internal Revenue were abolished by Reorg. Plan No. 1 of 1952, § 1, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, set out in the Appendix to Title 5, Government Organization and Employees, and the offices of "district commissioner of internal revenue", and so many other offices, with titles to be determined by the Secretary of the Treasury, were established by section 2(a) of the Plan.

§ 3046. Warrant or summons—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Issuance upon complaint, Rule 4.

Issuance upon indictment, Rule 9.

Summons on request of government; form; contents; service; return, Rules 4, 9.

(June 25, 1948, ch. 645, 62 Stat. 816.)

§ 3047. Multiple warrants unnecessary

When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial. It shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in general terms.

(June 25, 1948, ch. 645, 62 Stat. 816.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 602 (R.S. § 1027). Minor changes were made in phraseology.

FEDERAL RULES OF CRIMINAL PROCEDURE

Warrants and summonses generally, see rules 4 and 9, Appendix to this title.

§ 3048. Commitment to another district; removal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Arrest in nearby or distant districts; informative statement by judge or magistrate; hearing and removal; warrant; Rule 40.

(June 25, 1948, ch. 645, 62 Stat. 817; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner".

§ 3049. Warrant for removal

Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 604 (R.S. § 1029).

§ 3050. Bureau of Prisons employees' powers

An officer or employee of the Bureau of Prisons of the Department of Justice may make arrests without warrant for violations of any of the provisions of sections 751, 752, 1791, or 1792 of this title, if he has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of his escaping before a warrant can be obtained for his arrest. If the arrested person is a fugitive from custody, he shall be returned to custody. Officers and employees of the said Bureau of Prisons may carry firearms under such rules and regulations as the Attorney General may prescribe.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753k (June 29, 1940, ch. 449, § 5, 54 Stat. 693).

Section was broadened to include authority to make arrests for mutiny, riot or traffic in dangerous instrumentalities, by reference to section 1792 of this title.

Minor changes were made in phraseology and provision for taking arrested person before magistrate was omitted as covered by rule 5(a) of the Federal Rules of Criminal Procedure.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

[§ 3051. Repealed. Oct. 31, 1951, ch. 655, § 56(f), 65 Stat. 729]

Section, act June 25, 1948, ch. 645, § 1, 62 Stat. 817, related to powers of extradition agents. Substantially identical provisions are contained in section 3193 of this title.

SAVINGS CLAUSE

Subsec. (*l*) of section 56 of act Oct. 31, 1951, ch. 655, 65 Stat. 729, provided that the repeal of this section should not affect any rights or liabilities existing hereunder on the effective date of the repeal (Oct. 31, 1951).

§ 3052. Powers of Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(June 25, 1948, ch. 645, 62 Stat. 817; Jan. 10, 1951, ch. 1221, § 1, 64 Stat. 1239.)

HISTORICAL AND REVISION NOTES

Based on section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (June 18, 1934, ch. 595, 48 Stat. 1008; Mar. 22, 1935, ch. 39, title II, 49 Stat. 77).

Language relating to seizures under warrant is in section 3107 of this title.

Minor changes were made in phraseology particularly with respect to omission of provision covered by rule 5(a) of Federal Rules of Criminal Procedure.

AMENDMENTS

1951—Act Jan. 10, 1951, allowed F. B. I. personnel to make arrests without a warrant for any offense against the United States committed in their presence.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Federal Bureau of Investigation generally, see section 531 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 3053. Powers of marshals and deputies

United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on section 504a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 15, 1935, ch. 259, § 2, 49 Stat. 378).

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

United States marshals generally, see section 561 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 3054. Officer's powers involving animals and birds

Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, may arrest any person who violates section 42 or 44, or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43, in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections.

(June 25, 1948, ch. 645, 62 Stat. 817; Dec. 5, 1969, Pub. L. 91-135, § 7(b), 83 Stat. 281.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 393a (June 15, 1935, ch. 261, title II, § 202, 49 Stat. 381; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

Section 393a was incorporated in this section and sections 43, 44, and 3112 of this title.

Minor changes of phraseology were made.

AMENDMENTS

1969—Pub. L. 91-135 provided for enforcement of section 42 of this title and substituted "any person who violates section 42 or 44, or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43," for "any person violating said sections".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-135 effective 180 days after Dec. 5, 1969, see section 11 of Pub. L. 91-135, set out as an Effective Date of 1969 Amendment note under section 705 of Title 16, Conservation.

§ 3055. Officers' powers to suppress Indian liquor traffic

The chief special officer for the suppression of the liquor traffic among Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs or the Secretary of the Interior may execute all warrants of arrest and other lawful precepts issued under the authority of the United States and in the execution of his duty he may command all necessary assistance.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on section 250 of title 25, U.S.C., 1940 ed., Indians (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519).

The only change was to delete the words at the beginning of the section, "The powers conferred by section 504 of title 28 upon marshals and their deputies are conferred upon." and the addition, at the end of the section, of the phrase expressing such powers beginning with the words "may execute all warrants".

§ 3056. Secret Service powers

(a) Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to protect the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President or other officer next in the order of succession to the Office of President, and the Vice President-elect, and the members of their immediate families unless the members decline such protection; protect the person of a former President and his wife during his lifetime, the person of a widow of a former President until her death or remarriage, and minor children of a former President until they reach sixteen years of age, unless such protection is declined; protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad; detect and arrest any person committing any offense against the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments; detect and arrest any person violating any of the provisions of sections 508, 509, and 871 of this title and, insofar as the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks and Federal land bank associations are concerned, of sections 218, 221, 433, 493, 657, 709, 1006, 1007, 1011, 1013, 1014, 1907, and 1909 of this title; execute warrants issued under the authority of the United States; carry firearms; offer and pay rewards for services or information looking toward the apprehension of criminals; pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on his certificate; and perform such other functions and duties as are authorized by law. In the performance of their duties under this section, the Director, Deputy Director, Assistant Directors, Assistants to the Director, inspectors, and agents of the Secret Service are authorized to make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. Moneys expended from Secret Service appropriations for the purchase of counterfeits and subsequently recovered shall be reimbursed to the appropriation current at the time of deposit.

(b) Whoever knowingly and willfully obstructs, resists, or interferes with an agent of the United States Secret Service or other Federal law enforcement agent engaged in the performance of the protective functions authorized by this section, by the Act of June 6, 1968 (82 Stat. 170) or by section 1752 of title 18, United States Code, shall be fined not more than $300 or imprisoned not more than one year or both.

(July 25, 1948, ch. 645, 62 Stat. 818; July 16, 1951, ch. 226, § 4, 65 Stat. 122; Aug. 31, 1954, ch. 1143, § 2, 68 Stat. 999; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), 73 Stat. 387; Oct. 10, 1962, Pub. L. 87-791, 76 Stat. 809; Oct. 15, 1962, Pub. L. 87-829, § 3, 76 Stat. 956; Sept. 15, 1965, Pub. L. 89-186, 79 Stat. 791; Sept. 29, 1965, Pub. L. 89-218, 79 Stat. 890; Oct. 21, 1968, Pub. L. 90-608, ch. XI, § 1101, 82 Stat. 1198; Jan. 2, 1971, Pub. L. 91-644, title V, § 19, 84 Stat. 1892; Jan. 5, 1971, Pub. L. 91-651, § 4, 84 Stat. 1941; July 12, 1974, Pub. L. 93-346, § 8, as added Dec. 27, 1974, Pub. L. 93-552, title VI, § 609(a), 88 Stat. 1765; Sept. 11, 1976, Pub. L. 94-408, § 2, 90 Stat. 1239.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 148, and on sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 12B, subsection (x), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 31, sixth paragraph, 39 Stat. 382 (384); Dec. 11, 1926, ch. 2, § 3, 44 Stat. 918; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684, 703).

Section consolidates said section 148 of title 18, U.S.C., 1940 ed., and said sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking.

Said section 148 of title 12, U.S.C., 1940 ed., Banks and Banking, was concerned with offenses relating to counterfeiting and passing, etc., of transportation requests and to the unlawful possession or making of plates, stones, etc., used in making such requests, which were defined in sections 146 and 147 of said title 18, now sections 508 and 509 of this title.

Said sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking, were concerned with various offenses as defined in sections 981-985, 987 of said title 12, relating to Federal land banks, joint-stock land banks and national farm loan associations, and as defined in section 264 of said title 12 relating to the Federal Deposit Insurance Corporation. All of the provisions of said sections 981-985, 987 of said title 12, and the criminal provisions of said section 264 of said title 12, were transferred to this title where they were, in some instances, consolidated with similar provisions from other sections. Such provisions are now incorporated in sections 218, 221, 433, 493, 657, 709, 1006, 1007, 1011, 1013, 1014, 1907, and 1909 of this title. In most instances, these sections, as the result of the consolidations, relate to other organizations as well as those mentioned above, but, by enumerating the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks, and national farm loan associations in this section, the powers of the Secret Service are not broadened beyond what they were in said sections 264(x) and 986 of said title 12.

In this section, the wording of said section 148 of title 18, U.S.C., 1940 ed., and section 986 of title 12, U.S.C., 1940 ed., Banks and Banking reading "The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department" was adopted, rather than the wording of said section 264(x) of said title 12, which read "The Secret Service Division of the Treasury Department is authorized."

Words "of the United States marshal having jurisdiction", following "custody" in all three of said sections, were omitted as surplusage.

Changes were made in phraseology.

REFERENCES IN TEXT

Sections 218 and 221 of this title, referred to in subsec. (a), were redesignated sections 213 and 216, respectively, by Pub. L. 87-849, § 1(d), Oct. 23, 1962, 76 Stat. 1125.

The Act of June 6, 1968 (82 Stat. 170), referred to in subsec. (b), is set out as "Major Presidential or Vice Presidential Candidates and Spouses; Personal Protection" note under this section.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-408 substituted ", and the members of their immediate families unless the members decline such protection;" for "; protect the members of the immediate family of the Vice-President, unless such protection is declined;".

Subsec. (b). Pub. L. 94-408 added reference to other Federal law enforcement agents.

1974—Subsec. (a). Pub. L. 93-552 added the provisions relating to the protection of the immediate family of the Vice President unless declined, and the payment of expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on his certificate.

1971—Pub. L. 91-651 authorized the Secret Service to protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad, and substituted "Director, Deputy Director, Assistant Directors, Assistants to the Director" for "Chief, Deputy Chief, Assistant Chief".

Pub. L. 91-644 designated existing provisions as subsec. (a) and added subsec. (b).

1968—Pub. L. 90-608 substituted the death or remarriage of a former President's widow and the attainment by his minor children of age 16 for the passage of a period of four years after he leaves or dies in office as the events terminating Secret Service protection for the widow and minor children, respectively, of a former President.

1965—Pub. L. 89-218 authorized the Chief, Deputy Chief, Assistant Chief, inspectors, and agents of the Secret Service to make arrests without warrant for offenses committed against the United States in their presence or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing the felony and substituted "508, 509, and 871" for "508 and 509".

Pub. L. 89-186 substituted provision for the protection of the person of a former President and his wife during his lifetime and the person of a widow and minor children of a former President for a period of four years after he leaves or dies in office, unless the protection is declined, for provision calling for the protection of a former President, at his request, for a reasonable period after he leaves office.

1962—Pub. L. 87-829 authorized the protection of the Vice President, without requiring his request therefor, and any officer next in the order of succession to the office of President, the Vice-President-elect, and of a former president, at his request, for a reasonable period after he leaves office.

Pub. L. 87-791 required moneys expended from Secret Service appropriations for the purchase of counterfeits and subsequently recovered to be reimbursed to the appropriation current at the time of deposit.

1959—Pub. L. 86-168 substituted "Federal land bank associations" for "national farm loan associations".

1954—Act Aug. 31, 1954, eliminated the following "detect, and arrest any person violating any laws of the United States directly concerning official matters administered by and under the direct control of the Treasury Department", which clarifies the FBI's authority to investigate Treasury Department officers and employees.

1951—Act July 16, 1951, provided basic authority for the Secret Service to perform certain functions and activities heretofore carried out by virtue of authority contained in appropriation acts.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-552 effective July 12, 1974, see section 609(b) of Pub. L. 93-552, set out as an Effective Date of 1974 Amendment note under section 202 of Title 3, The President.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86-168.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the said Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

MAJOR PRESIDENTIAL OR VICE PRESIDENTIAL CANDIDATES AND SPOUSES; PERSONAL PROTECTION

Pub. L. 90-331, June 6, 1968, 82 Stat. 170, as amended by Pub. L. 94-408, § 1, Sept. 11, 1976, 90 Stat. 1239; Pub. L. 94-524, § 11, Oct. 17, 1976, 90 Stat. 2477, provided that:

"[SECTION 1. ADDITIONAL POWERS; ADVISORY COMMITTEE] That (a) the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to persons who are determined from time to time by the Secretary of the Treasury, after consulation with the advisory committee, as being major presidential or vice presidential candidates who should receive such protection (unless the candidate has declined such protection). Upon request of a Presidential or Vice Presidential nominee of a major political party, as determined by the Secretary after consultation with the advisory committee, the Secretary may authorize the United States Secret Service to furnish protection to the spouse of such major Presidential or Vice Presidential nominee, except that such protection shall not commence more than sixty days prior to the general Presidential election.

"(b) The advisory committee referred to in subsection (a) shall consist of the Speaker of the House of

Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, the minority leader of the Senate and one additional member selected by the other members of the committee.

SEC. 2. [Repealed. Pub. L. 94-524, § 11, Oct. 17, 1976, 90 Stat. 2477. Section required assistance of Federal Departments and agencies.]

"SEC. 3. [AUTHORIZATION OF APPROPRIATIONS]. For necessary expenses of carrying out the provisions of this resolution, there is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1968, the sum of $400,000."

PRESIDENTIAL PROTECTION ASSISTANCE ACT OF 1976

Pub. L. 94-524, §§ 1 to 10, Oct. 17, 1976, 90 Stat. 2475, provided:

"That this Act may be cited as the 'Presidential Protection Assistance Act of 1976'.

"SEC. 2. As used in this Act the term—

"(1) 'Secret Service' means the United States Secret Service, the Department of the Treasury;

"(2) 'Director' means the Director of the Secret Service;

"(3) 'protectee' means any person eligible to receive the protection authorized by section 3056 of title 18, United States Code, or Public Law 90-331 (82 Stat. 170) [set out as a note above];

"(4) 'Executive departments' has the same meaning as provided in section 101 of title 5, United States Code;

"(5) 'Executive agencies' has the same meaning as provided in section 105 of title 5, United States Code;

"(6) 'Coast Guard' means the United States Coast Guard, Department of Transportation or such other Executive department or Executive agency to which the United States Coast Guard may subsequently be transferred;

"(7) 'duties' means all responsibilities of an Executive department or Executive agency relating to the protection of any protectee; and

"(8) 'non-Governmental property' means any property owned, leased, occupied, or otherwise utilized by a protectee which is not owned or controlled by the Government of the United States of America.

"SEC. 3. (a) Each protectee may designate one non-governmental property to be fully secured by the Secret Service on a permanent basis.

"(b) A protectee may thereafter designate a different non-Governmental property in lieu of the non-Governmental property previously designated under subsection (a) (hereinafter in this Act referred to as the 'previously designated property') as the one non-Governmental property to be fully secured by the Secret Service on a permanent basis under subsection (a). Thereafter, any expenditures by the Secret Service to maintain a permanent guard detail or for permanent facilities, equipment, and services to secure the non-Governmental property previously designated under subsection (a) shall be subject to the limitations imposed under section 4.

"(c) For the purposes of this section, where two or more protectees share the same domicile, such protectees shall be deemed a single protectee.

"SEC. 4. Expenditures by the Secret Service for maintaining a permanent guard detail and for permanent facilities, equipment, and services to secure any non-Governmental property in addition to the one non-Governmental property designated by each protectee under subsection 3(a) or 3(b) may not exceed a cumulative total of $10,000 at each such additional non-Governmental property, unless expenditures in excess of that amount are specifically approved by resolutions adopted by the Committees on Appropriations of the House and Senate, respectively.

"SEC. 5. (a) All improvements and other items acquired by the Federal Government and used for the purpose of securing any non-Governmental property in the performance of the duties of the Secret Service shall be the property of the United States.

"(b) Upon termination of Secret Service protection at any non-Governmental property all such improvements and other items shall be removed from the non-Governmental property unless the Director determines that it would not be economically feasible to do so; except that such improvements and other items shall be removed and the non-Governmental property shall be restored to its original state if the owner of such property at the time of termination requests the removal of such improvements or other items. If any such improvements or other items are not removed, the owner of the non-Governmental property at the time of termination shall compensate the United States for the original cost of such improvements or other items or for the amount by which they have increased the fair market value of the property, as determined by the Comptroller General of the United States, as of the date of termination, whichever is less.

"(c) In the event that any non-Governmental property becomes a previously designated property and Secret Service protection at that property has not been terminated, all such improvements and other items which the Director determines are not necessary to secure the previously designated property within the limitations imposed under section 4 shall be removed or compensated for in accordance with the procedures set forth under Subsection (b) of this section.

"SEC. 6. Executive departments and Executive agencies shall assist the Secret Service in the performance of its duties by providing services, equipment, and facilities on a temporary and reimbursable basis when requested by the Director and on a permanent and reimbursable basis upon advance written request of the Director; except that the Department of Defense and the Coast Guard shall provide such assistance on a temporary basis without reimbursement when assisting the Secret Service in its duties directly related to the protection of the President or the Vice President or other officer immediately next in order of succession to the office of the President.

"SEC. 7. No services, equipment, or facilities may be ordered, purchased, leased, or otherwise procured for the purposes of carrying out the duties of the Secret Service by persons other than officers or employees of the Federal Government duly authorized by the Director to make such orders, purchases, leases, or procurements.

"SEC. 8. No funds may be expended or obligated for the purpose of carrying out the purposes of section 3056 of title 18, United States Code, and section 1 of Public Law 90-331 [set out as a note above] other than funds specifically appropriated to the Secret Service for those purposes with the exception of—

"(1) expenditures made by the Department of Defense or the Coast Guard from funds appropriated to the Department of Defense or the Coast Guard in providing assistance on a temporary basis to the Secret Service in the performance of its duties directly related to the protection of the President or the Vice President or other officer next in order of succession to the office of the President; and

"(2) expenditures made by Executive departments and agencies, in providing assistance at the request of the Secret Service in the performance of its duties, and which will be reimbursed by the Secret Service under section 6 of this Act.

"SEC. 9. The Director, the Secretary of Defense, and the Commandant of the Coast Guard shall each transmit a detailed semi-annual report of expenditures made pursuant to this Act during the six-month period immediately preceding such report by the Secret Service, the Department of Defense, and the Coast Guard, respectively, to the Committees on Appropriations, Committees on the Judiciary, and Committees on Government Operations of the House of Representatives and the Senate,[1] respectively, on March 31 and September 30, of each year.

"SEC. 10. Expenditures made pursuant to this Act shall be subject to audit by the Comptroller General

[1] Senate Committee on Government Operations redesignated the Senate Committee on Government Affairs, effective Feb. 11, 1977.

and his authorized representatives, who shall have access to all records relating to such expenditures. The Comptroller General shall transmit a report of the results of any such audit to the Committees on Appropriations, Committees on the Judiciary, and Committees on Government Operations of the House of Representatives and the Senate,[1] respectively."

EXTENSION OF PROTECTION OF PRESIDENT'S WIDOW AND CHILDREN

Pub. L. 90-145, Nov. 17, 1967, 81 Stat. 466, extended until Mar. 1, 1969, the authority vested in the United States Secret Service by section 3056 of this title, as it existed prior to the amendment in 1968 by Pub. L. 90-608, to protect the widow and minor children of a former President who were receiving such protection on Nov. 17, 1967.

APPLICABILITY OF REORG. PLAN NO. 26 OF 1950

Section 5 of Pub. L. 91-651 provided that: "Section 3056 of title 18, United States Code, as amended by section 4 of this Act, shall be subject to Reorganization Plan Numbered 26 of 1950 (64 Stat. 1280) [set out in the Appendix to Title 5, Government Organization and Employees]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 552a; title 31 section 685a.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1-826 of the District of Columbia Code.

§ 3057. Bankruptcy investigations

(a) Any referee, receiver, or trustee having reasonable grounds for believing that any violations of the bankruptcy laws or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has[1] been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the referee, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

(June 25, 1948, ch. 645, 62 Stat. 818; May 24, 1949, ch. 139, § 48, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 52(e)(1), (2) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29e(1), (2), as added by May 27, 1926, ch. 406, § 11, 44 Stat. 665, 666; June 22, 1938, ch. 575, § 1, 52 Stat. 840, 856).

Remaining provisions of section 52 of title 11, U.S.C., 1940 ed., Bankruptcy, constitute sections 151-154, and 3284 of this title.

The words "or laws relating to insolvent debtors, receiverships, or reorganization plans" were inserted to avoid reference to "Title 11".

Minor changes were made in phraseology.

[1] So in original.

1949 ACT

This section [section 48] clarifies the meaning of section 3057 of title 18, U.S.C., by expressly limiting to laws "of the United States", violations of laws which are to be reported to the United States attorney.

REFERENCES IN TEXT

The bankruptcy laws, referred to in subsec. (a), are classified generally to Title 11, Bankruptcy.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, substituted "or other laws of the United States" for "or laws".

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3058. Interned belligerent nationals

Whoever, belonging to the armed land or naval forces of a beligerent[1] nation or belligerent faction and being interned in the United States, in accordance with the law of nations, leaves or attempts to leave said jurisdiction, or leaves or attempts to leave the limits of internment without permission from the proper official of the United States in charge, or willfully overstays a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct.

(June 25, 1948, ch. 645, 62 Stat. 818.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 37 (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223).

Said section 37 was incorporated in this section and section 756 of this title.

Minor verbal changes were made.

CROSS REFERENCES

Jurisdiction, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 465.

§ 3059. Rewards and appropriations therefor

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $25,000 as a reward or rewards for the capture of anyone who is charged with violation of criminal laws of the United States or any State or of the District of Columbia, and an equal amount as a reward or rewards for information leading to the arrest of any such person, to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States. Not more than $25,000 shall be expended for information or capture of any one person.

[1] So in original.

If any of the said persons shall be killed in resisting lawful arrest, the Attorney General may pay any part of the reward money in his discretion to the person or persons whom he shall adjudge to be entitled thereto but no reward money shall be paid to any official or employee of the Department of Justice of the United States.

(June 25, 1948, ch. 645, 62 Stat. 818.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 575 (June 6, 1934, ch. 408, 48 Stat. 910).

Changes were made in phraseology.

REFERENCES IN TEXT

The criminal laws of the United States, referred to in text, are classified generally to this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 3060. Preliminary examination

(a) Except as otherwise provided by this section, a preliminary examination shall be held within the time set by the judge or magistrate pursuant to subsection (b) of this section, to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.

(b) The date for the preliminary examination shall be fixed by the judge or magistrate at the initial appearance of the arrested person. Except as provided by subsection (c) of this section, or unless the arrested person waives the preliminary examination, such examination shall be held within a reasonable time following initial appearance, but in any event not later than—

(1) the tenth day following the date of the initial appearance of the arrested person before such officer if the arrested person is held in custody without any provision for release, or is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or

(2) the twentieth day following the date of the initial appearance if the arrested person is released from custody under any condition other than a condition described in paragraph (1) of this subsection.

(c) With the consent of the arrested person, the date fixed by the judge or magistrate for the preliminary examination may be a date later than that prescribed by subsection (b), or may be continued one or more times to a date subsequent to the date initially fixed therefor. In the absence of such consent of the accused, the date fixed for the preliminary hearing may be a date later than that prescribed by subsection (b), or may be continued to a date subsequent to the date initially fixed therefor, only upon the order of a judge of the appropriate United States district court after a finding that extraordinary circumstances exist, and that the delay of the preliminary hearing is indispensable to the interests of justice.

(d) Except as provided by subsection (e) of this section, an arrested person who has not been accorded the preliminary examination required by subsection (a) within the period of time fixed by the judge or magistrate in compliance with subsections (b) and (c), shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him upon the charge upon which he was arrested.

(e) No preliminary examination in compliance with subsection (a) of this section shall be required to be accorded an arrested person, nor shall such arrested person be discharged from custody or from the requirement of bail or any other condition of release pursuant to subsection (d), if at any time subsequent to the initial appearance of such person before a judge or magistrate and prior to the date fixed for the preliminary examination pursuant to subsections (b) and (c) an indictment is returned or, in appropriate cases, an information is filed against such person in a court of the United States.

(f) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. A copy of the record of such proceeding shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(June 25, 1948, ch. 645, 62 Stat. 819; Oct. 17, 1968, Pub. L. 90-578, title III, § 303(a), 82 Stat. 1117.)

AMENDMENTS

1968—Pub. L. 90-578 substituted provisions of subsecs. (a) to (f) of this section detailing preliminary examination content for prior provisions which directed attention to the rule in the section catchline, and directed one to see Federal Rules of Criminal Procedure, including "Proceedings before commissioner, appearance, advice as to right to counsel, hearing, Rule 5.".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3061. Powers of postal personnel

(a) Subject to subsection (b) of this section, officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—

(1) serve warrants and subpenas issued under the authority of the United States;

(2) make arrests without warrant for offenses against the United States committed in their presence; and

(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to be-

lieve that the person to be arrested has committed or is committing such a felony.

(b) The powers granted by subsection (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other postal offenses.

(Added Pub. L. 90-560, § 5(a), Oct. 12, 1968, 82 Stat. 998, and amended Pub. L. 91-375, § 6(j)(38)(A), Aug. 12, 1970, 84 Stat. 781.)

AMENDMENTS

1970—Pub. L. 91-375, § 6(j)(38)(A)(i), substituted "postal personnel" for "postal inspectors" in the catchline.

Subsec. (a). Pub. L. 91-375, § 6(j)(38)(A)(ii), substituted "officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—" for "postal inspectors may, to the extent authorized by the Postmaster General—".

Subsec. (b). Pub. L. 91-375, § 6(j)(38)(A)(iii), substituted "Postal Service, including property of the Postal Service," for "postal service".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CHAPTER 205—SEARCHES AND SEIZURES

Sec.
3101. Effect of rules of court—Rule.
3102. Authority to issue search warrant—Rule.
3103. Grounds for issuing search warrant—Rule.
3103a. Additional grounds for issuing warrant.
3104. Issuance of search warrant; contents—Rule.
3105. Persons authorized to serve search warrant.
3106. Officer authorized to serve search warrant—Rule.
3107. Service of warrants and seizures by Federal Bureau of Investigation.
3108. Execution, service, and return—Rule.
3109. Breaking doors or windows for entry or exit.
3110. Property defined—Rule.
3111. Property seizable on search warrant—Rule.
3112. Search warrants for seizure of animals, birds or eggs.
3113. Liquor violations in Indian country.
3114. Return of seized property and suppression of evidence; motion—Rule.
3115. Inventory upon execution and return of search warrant—Rule.
3116. Records of examining magistrate; return to clerk of court—Rule.

CODIFICATION

Pub. L. 90-351 enacted section 3103a of this title as part of chapter 204, and Pub. L. 90-462, § 3, Aug. 8, 1968, 82 Stat. 638, corrected the chapter designation from 204 to 205.

AMENDMENTS

1968—Pub. L. 90-351, title IX, § 1401(b), June 19, 1968, 82 Stat. 238, added item 3103a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 26 section 7302.

§ 3101. Effect of rules of court—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Rules generally applicable throughout United States, Rule 54.

Acts of Congress superseded, Rule 41(g).

(June 25, 1948, ch. 645, 62 Stat. 819.)

REFERENCES IN TEXT

Rule 41(g), referred to in text, was relettered 41(h) by 1972 amendment eff. Oct. 1, 1972.

§ 3102. Authority to issue search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Federal, State or Territorial Judges, or U.S. magistrates authorized to issue search warrants, Rule 41(a).

(June 25, 1948, ch. 645, 62 Stat. 819; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(4), 82 Stat. 1115.)

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrates" for "Commissioners".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3103. Grounds for issuing search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Grounds prescribed for issuance of search warrant, Rule 41(b).

(June 25, 1948, ch. 645, 62 Stat. 819.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3103a of this title.

§ 3103a. Additional grounds for issuing warrant

In addition to the grounds for issuing a warrant in section 3103 of this title, a warrant may be issued to search for and seize any property that constitutes evidence of a criminal offense in violation of the laws of the United States.

(Added Pub. L. 90-351, title IX, § 1401(a), June 19, 1968, 82 Stat. 238.)

CODIFICATION

Pub. L. 90-351 enacted section 3103a of this title as part of chapter 204, and Pub. L. 90-462, § 3, Aug. 8, 1968, 82 Stat. 638, corrected the chapter designation from 204 to 205.

§ 3104. Issuance of search warrant; contents—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Issuance of search warrant on affidavit; contents to identify persons or place; command to search forthwith, Rule 41(c).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3105. Persons authorized to serve search warrant

A search warrant may in all cases be served by any of the officers mentioned in its direction

or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(June 25, 1948, ch. 645, 62 Stat. 819.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 617 (June 15, 1917, ch. 30, title XI, § 7, 40 Stat. 229).

Minor change was made in phraseology.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Search warrants and seizures, see rule 41, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 3106. Officer authorized to serve search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Officer to whom search warrant shall be directed, Rule 41(c).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3107. Service of warrants and seizures by Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to make seizures under warrant for violation of the laws of the United States.

(June 25, 1948, ch. 645, 62 Stat. 819; Jan. 10, 1951, ch. 1221, § 2, 64 Stat. 1239.)

HISTORICAL AND REVISION NOTES

Based on section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (June 18, 1934, ch. 595, 48 Stat. 1008; Mar. 22, 1935, ch. 39, title II, 49 Stat. 77).

Section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, was used as the basis for this section and section 3052 of this title.

AMENDMENTS

1951—Act Jan. 10, 1951, included within its provisions the Associate Director and the Assistant to the Director.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3108. Execution, service, and return—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Method and time for execution, service and return of search warrant, Rule 41(c), (d).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3109. Breaking doors or windows for entry or exit

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

(June 25, 1948, ch. 645, 62 Stat. 820.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 618, 619 (June 15, 1917, ch. 30, title XI, §§ 8, 9, 40 Stat. 229).

Said sections 618 and 619 were consolidated with minor changes in phraseology but without change of substance.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Authority, exceeding in executing warrant, see section 2234 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Search warrants and seizures, see rule 41, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 3110. Property defined—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Term "property" as used in Rule 41 includes documents, books, papers and any other tangible objects, Rule 41(g).

(June 25, 1948, ch. 645, 62 Stat. 820.)

REFERENCES IN TEXT

Rule 41(g), referred to in text, was relettered 41(h) by 1972 amendment eff. Oct. 1, 1972.

§ 3111. Property seizable on search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Specified property seizable on search warrant, Rule 41(b).

(June 25, 1948, ch. 645, 62 Stat. 820.)

§ 3112. Search warrants for seizure of animals, birds or eggs

Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43, and any such wildlife, product, property, or item so seized shall be held by him or by the United States marshal pending disposition thereof by the court.

(June 25, 1948, ch. 645, 62 Stat. 820; Dec. 5, 1969, Pub. L. 91-135, § 7(c), 83 Stat. 281.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 393a (June 15, 1935, ch. 261, title II, § 202, 49 Stat. 381; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

Section 393a of title 18, U.S.C., 1940 ed., was incorporated in this section and sections 43, 44, and 3054 of this title.

Only such changes of phraseology were made as were necessary to make this section conform with Rule 41 of the Federal Rules of Criminal Procedure.

AMENDMENTS

1969—Pub. L. 91-135 provided for enforcement of section 42 of this title and substituted "property, or item used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43," for "property used or possessed in violation of said sections".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-135 effective 180 days after Dec. 5, 1969, see section 11 of Pub. L. 91-135, set out as an Effective Date of 1969 Amendment note under section 705 of Title 16, Conservation.

§ 3113. Liquor violations in Indian country

If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision have probable cause to believe that any person is about to introduce or has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.

Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army.

In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses.

(June 25, 1948, ch. 645, 62 Stat. 820; Oct. 31, 1951, ch. 655, § 30, 65 Stat. 721.)

HISTORICAL AND REVISION NOTES

Based on sections 246, 248, 252 of title 25, U.S.C., 1940 ed., Indians (R.S. § 2140; Mar. 1, 1907, ch. 2285, 34 Stat. 1017; May 18, 1916, ch. 125, § 1, 39 Stat. 124).

Said sections 246, 248, and 252 were consolidated. References to Indian agent and subagent were deleted since those positions no longer exist. See section 64 of title 25, U.S.C., 1940 ed., Indians, and notes thereunder.

Words "except such as are kept or used for scientific, sacramental, medicinal or mechanical purposes" were inserted. See reviser's note under section 1154 of this title.

Words "conveyances and packages" were substituted for the enumeration, "boats, teams, wagons and sleds * * * and goods, packages and peltries."

Minor changes were made in phraseology.

AMENDMENTS

1951—Act Oct. 31, 1951, substituted in second paragraph "Department of the Army" for "War Department".

CROSS REFERENCES

Application of Indian liquor laws, see section 1161 of this title.

Disposition of seized conveyances, see section 3619 of this title.

Indian country defined, see section 1151 of this title.

Intoxicants dispensed in Indian country, see section 1154 of this title.

Jurisdiction of forfeiture proceedings by district courts, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Seizure and forfeiture of conveyances introducing intoxicants into Indian country, see section 3618 of this title.

Unlawful possession of intoxicants in Indian country, see section 1156 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1161, 3619 of this title.

§ 3114. Return of seized property and suppression of evidence; motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Return of property and suppression of evidence upon motion, Rule 41(e).

(June 25, 1948, ch. 645, 62 Stat. 820.)

§ 3115. Inventory upon execution and return of search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Inventory of property seized under search warrant and copies to persons affected, Rule 41(d).

(June 25, 1948, ch. 645, 62 Stat. 820.)

§ 3116. Records of examining magistrate; return to clerk of court—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Magistrates and clerks of court to keep records as prescribed by Director of the Administrative Office of the United States Courts, Rule 55.

Return or filing of records with clerk, Rule 41(f).

(June 25, 1948, ch. 645, 62 Stat. 821; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(4), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Section 627 of title 18, U.S.C., 1940 ed., relating to the filing of search warrants and companion papers, was omitted as unnecessary in view of Rule 41(f) of the Federal Rules of Criminal Procedure.

REFERENCES IN TEXT

Rule 41(f), referred to in text, was relettered 41(g) by 1972 amendment eff. Oct. 1, 1972.

AMENDMENTS

1968—Pub. L. 90-578 substituted "Magistrates" for "Commissioners".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date

of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 207—RELEASE

Sec.
3141. Power of courts and magistrates.
3142. Surrender by bail.
3143. Additional bail.
3144. Cases removed from State courts.
3145. Parties and witnesses—Rule.
3146. Release in noncapital cases prior to trial.
3147. Appeal from conditions of release.
3148. Release in capital cases or after conviction.
3149. Release of material witnesses.
3150. Penalties for failure to appear.
3151. Contempt.
3152. Establishment of Pretrial Services Agencies.[1]
3153. Organization of Pretrial Services Agencies.[1]
3154. Functions and Powers of Pretrial Services Agencies.[1]
3155. Report to Congress.
3156. Definitions.

AMENDMENTS

1975—Pub. L. 93-619, title II, § 202, Jan. 3, 1975, 88 Stat. 2089, added items 3153 to 3156, and in item 3152, substituted "Establishment of Pretrial Services Agencies" for "Definitions".

1966—Pub. L. 89-465, §§ 3(b), 5(e)(1), June 22, 1966, 80 Stat. 216, 217, substituted "Release" for "Bail" in the chapter heading and "Release in noncapital cases prior to trial" for "Jumping Bail" in item 3146, and added items 3147 to 3152.

1954—Act Aug. 20, 1954, ch. 772, § 2, 68 Stat. 748, added item 3146.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3041, 3731 of this title.

§ 3141. Power of courts and magistrates

Bail may be taken by any court, judge, or magistrate authorized to arrest and commit offenders, but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death.

(June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(b), 80 Stat. 217.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 596, 597 (R.S. §§ 1015, 1016; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Sections 596 and 597 of title 18, U.S.C., 1940 ed., except as superseded by rule 40(a)(1) of the Federal Rules of Criminal Procedure are consolidated and rewritten in this section without change of meaning.

AMENDMENTS

1966—Pub. L. 89-465 substituted "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death" for "but in capital cases bail may be taken only by a court of the United States having original or appellate jurisdiction in criminal cases or by a justice or judge thereof".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-465 effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

[1] So in original. Does not conform to section catchline.

SHORT TITLE

Section 1 of Pub. L. 89-465 provided: "That this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title, and enacting provisions set out as a note below] may be cited as the 'Bail Reform Act of 1966'."

PURPOSE OF BAIL REFORM ACT OF 1966

Section 2 of Pub. L. 89-465 provided that: "The purpose of this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title and enacting provisions set out as a note above] is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest."

CROSS REFERENCES

Juvenile delinquents, release on bail, see section 5035 of this title.

Power of courts and magistrates to arrest, commit, or bail Federal offenders, see section 3041 of this title.

Supreme Court authorized to prescribe rules governing bail, see section 3772 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Amount of bail may be fixed by court and endorsed on warrant, see rule 9, Appendix to this title.

Application for bail to appellate court pending appeal, see rule 38.

Bail—

Generally, see rule 46.

Criminal contempt proceedings, see rule 42.

Removal proceedings, see rule 40.

Continuance or alteration of bail pending sentence, see rule 32.

Secrecy of indictment until bail is given, see rule 6.

United States magistrates authorized to admit arrested persons to bail, see rule 5.

§ 3142. Surrender by bail

Any party charged with a criminal offense who is released on the execution of an appearance bail bond with one or more sureties, may, in vacation, be arrested by his surety, and delivered to the marshal or his deputy, and brought before any judge or other officer having power to commit for such offense; and at the request of such surety, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneratur[1] of such surety; and the person so committed shall be held in custody until discharged by due course of law.

(June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(c), 80 Stat. 217.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 599 (R.S. § 1018). Minor changes were made in phraseology.

AMENDMENTS

1966—Pub. L. 89-465 substituted "who is released on the execution of an appearance bail bond with one or more sureties" for "and admitted to bail".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-465 effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

[1] So in original. Probably should read "exoneretur."

FEDERAL RULES OF CRIMINAL PROCEDURE

Exoneration of obligors on bail bonds, see rule 46, Appendix to this title.

§ 3143. Additional bail

When proof is made to any judge of the United States, or other magistrate authorized to commit on criminal charges, that a person previously released on the execution of an appearance bail bond with one or more sureties on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof.

(June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(d), 80 Stat. 217.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 600 (R.S. § 1019). Changes in phraseology were made.

AMENDMENTS

1966—Pub. L. 89-465 substituted "released on the execution of an appearance bail bond with one or more sureties" for "admitted to bail".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-465 effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Terms of bail, see rule 46, Appendix to this title.

§ 3144. Cases removed from State courts

Whenever the judgment of a State court in any criminal proceeding is brought to the Supreme Court of the United States for review, the defendant shall not be released from custody until a final judgment upon such review, or, if the offense be bailable, until a bond, with sufficient sureties, in a reasonable sum, is given.

(June 25, 1948, ch. 645, 62 Stat. 821.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 598 (R.S. § 1017; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

This section was rewritten with numerous changes of phraseology and substance to conform to rules 38 (b), (c) and 46(a), (2) of the Federal Rules of Criminal Procedure.

The requirement that the bail bond be "ordered and approved by the state court" is omitted as no longer applicable in view of these rules. (See also rules 1, 2, and 54.)

CROSS REFERENCES

Jurisdiction of Supreme Court to review State court judgments or decrees, see section 1257 of Title 28, Judiciary and Judicial Procedure.

§ 3145. Parties and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

On Preliminary Examination, Rule 5(b).

Before conviction; amount; sureties; forfeiture; exoneration, Rule 46.

Pending sentence, Rule 32(a).

Pending appeal or certiorari, Rule 38(b), (c), 39(a), 46(a, 2).

Witness, Rule 46.

(June 25, 1948, ch. 645, 62 Stat. 821.)

REFERENCES IN TEXT

Rule 5(b), referred to in text, is now covered by rule 5(c).

Rules 38(b), (c), and 39(a), referred to in text, were abrogated effective July 1, 1968, see Federal Rules of Appellate Procedure, Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 46 was amended as part of the Bail Reform Act in 1966 and in 1972, and some provisions originally contained in Rule 46 are now covered by this chapter, see Notes of Advisory Committee on Rules and Amendment notes under Rule 46, this Appendix.

§ 3146. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an ap-

propriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided,* That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 214.)

PRIOR PROVISIONS

A prior section 3146, act Aug. 20, 1954, ch. 772, § 1, 68 Stat. 747, which prescribed penalties for jumping bail, was eliminated by Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 214, and is now covered by sections 3150 and 3151 of this title.

EFFECTIVE DATE

Section 6 of Pub. L. 89-465 provided that: "This Act [enacting this section and sections 3147 to 3152 of this title, amending sections 3041, 3141 to 3143 and 3568 of this title, and enacting provision set out as a note under this section] shall take effect ninety days after the date on which it is enacted [June 22, 1966]. *Provided,* That the provisions of section 4 [amending section 3568 of this title], shall be applicable only to sentences imposed on or after the effective date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3147 to 3149, 3154, 3156 of this title; title 28 section 636.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3147. Appeal from conditions of release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3146(a). The appeal shall be determined promptly.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 215.)

EFFECTIVE DATE

Section effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3148, 3154, 3156 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3148. Release in capital cases or after conviction

A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or sentence review under section 3576 of this title or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided,* That other rights to judicial review of conditions of release or orders of detention shall not be affected.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 215, and amended Pub. L. 91-452, title X, § 1002, Oct. 15, 1970, 84 Stat. 952.)

AMENDMENTS

1970—Pub. L. 91-452 added "or sentence review under section 3576 of this title" following "awaiting sentence".

EFFECTIVE DATE

Section effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3149. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216.)

EFFECTIVE DATE

Section effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3150. Penalties for failure to appear

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both, or (2) if he was released on connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216.)

EFFECTIVE DATE

Section effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3151. Contempt

Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

(Added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216.)

EFFECTIVE DATE

Section effective ninety days after June 22, 1966, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3152. Establishment of pretrial services agencies

The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

(Added Pub. L. 93-619, title II, § 201, Jan. 3, 1975, 88 Stat. 2086.)

PRIOR PROVISIONS

A prior section 3152, as added by Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216, defined the terms "judicial officer" and "offense", and was repealed by Pub. L. 93-619, title II, § 201, Jan. 3, 1975, 88 Stat. 2086. See section 3156 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 28 section 604.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-1332 of the District of Columbia Code.

§ 3153. Organization of pretrial services agencies

(a) The powers of five pretrial services agencies shall be vested in the Division of Probation of the Administrative Office of the United States Courts. Such Division shall establish general policy for such agencies.

(b)(1) The powers of each of the remaining five pretrial services agencies shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

(2) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

(A) one member, who shall be a United States district court judge;

(B) one member, who shall be the United States attorney;

(C) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

(D) one member, who shall be the chief probation officer; and

(E) two members who shall be representatives of community organizations.

(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (C) (other than a public defender) and (E) of subsection (b)(2) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (C) (other than a public defender) or (E) of subsection (b)(2) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(d)(1) In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a Federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code.

(2) In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b)(1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–15 by section 5332 of title 5, United States Code.

(3) The designated probation officer or the chief pretrial service officer, subject to the general policy established by the Division of Probation or the Board of Trustees, respectively, shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established under chapter 53 of title 5, United States Code.

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2086.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

§ 3154. Functions and powers of pretrial services agencies

Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

(1) Collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person, but such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. In their respective districts, the Division of Probation or the Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to paragraph (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding, and in their respective districts, the Division of Probation or the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

(2) Review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147.

(3) Supervise persons released into its custody under this chapter.

(4) With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services.

(5) Inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.

(6) Serve as coordinator for other local agencies which serve or are eligible to serve as

custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

(9) Perform such other functions as the court may, from time to time, assign.

(Added Pub. L. 93-619, title II, § 201, Jan. 3, 1975, 88 Stat. 2087.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

§ 3155. Report to Congress

(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies operated by the Division of Probation with those operated by Boards of Trustees and with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

(b) On or before the expiration of the forty-eighth-month period following July 1, 1975, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.

(Added Pub. L. 93-619, title II, § 201, Jan. 3, 1975, 88 Stat. 2088.)

REFERENCES IN TEXT

Speedy Trial Act of 1974, referred to in subsec. (b), is Pub. L. 93-619, Jan. 3, 1975, 88 Stat. 2076, which is classified principally to chapter 208 (§ 3161 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3161 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

§ 3156. Definitions

(a) As used in sections 3146-3150 of this chapter—

(1) The term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia; and

(2) The term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

(b) As used in sections 3152-3155 of this chapter—

(1) the term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and

(2) the term "offense" means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub. L. 93-619, title II, § 201, Jan. 3, 1975, 88 Stat. 2088.)

CHAPTER 208—SPEEDY TRIAL

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AMENDMENTS

1975—Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2076, added chapter 208 and items 3161 to 3174.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3155 of this title.

§ 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with

a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.

(d) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from trials with respect to other charges against the defendant;

(D) delay resulting from interlocutory appeals;

(E) delay resulting from hearings on pretrial motions;

(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not

run and no motion for severance has been granted.

(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

(C) No continuance under paragraph (8)(A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly—

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2076.)

SHORT TITLE

Section 1 of Pub. L. 93-619 provided: "That this Act [enacting this chapter and sections 3153 to 3156 of this title, and amending section 3152 of this title, and section 604 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Speedy Trial Act of 1974'."

ACT REFERRED TO IN OTHER SECTIONS

The Speedy Trial Act of 1974 is referred to in section 3155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162 to 3166, 3174 of this title; title 15 section 18a.

§ 3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such compliant shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to

move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2079.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3163, 3174 of this title.

§ 3163. Effective dates

(a) The time limitation in section 3161(b) of this chapter—

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

(b) The time limitation in section 3161(c) of this chapter—

(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

(c) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3161 of this title.

§ 3164. Interim limits

(a) During an interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

(1) detained persons who are being held in detention solely because they are awaiting trial, and

(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

(b) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081.)

§ 3165. District plans—Generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall pre-

pare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e)(1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and subsequent twelve-calendar month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081.)

REFERENCES IN TEXT

Effective dates of subsections 3161(b) and 3161(c), referred to in subsecs. (e)(1), (2), are set out in section 3163 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3166, 3167, 3168 of this title.

§ 3166. District plans—contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications; and

(8) the incidence of, and reasons for each thirty-day extention[1] under section 3161(b) with respect to an indictment in that district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

[1] So in original. Probably should be "extension".

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition; and

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2082.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3170 of this title.

§ 3167. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The reports shall be submitted within three months following the final dates for the submission of plans under section 3165(e) of this title.

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083.)

§ 3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

(b) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of Federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

(c) Members of the planning group with the exception of the reporter shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the advisory group in accordance with the provisions of title 5, United States Code, chapter 57. The reporter shall be compensated in accordance with section 3109 of title 5, United States Code, and notwithstanding other provisions of law he may be employed for any period of time during which his services are needed.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3165 of this title.

§ 3169. Federal Judicial Center

The Federal Judicial Center shall advise and consult with the planning groups and the district courts in connection with their duties under this chapter.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§ 3170. Speedy trial data

(a) To facilitate the planning process and the implementation of the time limits and objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics required by sections 3166(b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

(b) The clerk of each district court is authorized to obtain the information required by sections 3166(b) and (c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

(c) The information and statistics compiled by the clerk pursuant to this section shall be made available to the district court, the planning group, the circuit council, and the Administrative Office of the United States Courts.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3166 of this title.

§ 3171. Planning appropriations

(a) There is authorized to be appropriated for the fiscal year ending June 30, 1975, to the Federal judiciary the sum of $2,500,000 to be allocated by the Administrative Office of the United States Courts to Federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans under this chapter. The funds so appropriated shall remain available until expended.

(b) No funds appropriated under this section may be expended in any district except by two-thirds vote of the planning group. Funds to the extent available may be expended for personnel, facilities, and any other purpose permitted by law.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3168 of this title.

§ 3172. Definitions

As used in this chapter—

(1) the terms "judge" or "judicial officer" mean, unless otherwise indicated, any United States magistrate, Federal district judge, and

(2) the term "offense" means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§ 3173. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§ 3174. Judicial emergency

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits. The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit shall find that no remedy for such congestion is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from arrangement[1] to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent by the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

CHAPTER 209—EXTRADITION

Sec.
3181. Scope and limitation of chapter.
3182. Fugitives from State or Territory to State, District or Territory.
3183. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of United States.
3184. Fugitives from foreign country to United States.
3185. Fugitives from country under control of United States into the United States.
3186. Secretary of State to surrender fugitive.
3187. Provisional arrest and detention within extraterritorial jurisdiction.
3188. Time of commitment pending extradition.

[1] So in original. Probably should be "arraignment".

Sec.
3189. Place and character of hearing.
3190. Evidence on hearing.
3191. Witnesses for indigent fugitives.
3192. Protection of accused.
3193. Receiving agent's authority over offenders.
3194. Transportation of fugitive by receiving agent.
3195. Payment of fees and costs.

CROSS REFERENCES

Removal of offenders against the United States, from district of arrest to district of commission of crime, see section 3042 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Applicable to removed proceedings, see rule 54, Appendix to this title.

Inapplicable to extradition or rendition of fugitives, see rule 54.

Removal proceedings, see rule 40.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 23-704 of the D.C. Code.

§ 3181. Scope and limitation of chapter

The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.

(June 25, 1948, ch. 645, 62 Stat. 822.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 658 (R.S. § 5274). Minor changes were made in phraseology.

TREATIES OF EXTRADITION

The United States has entered into the following bilateral treaties of extradition:

Country	Date signed	Entered into force	Citation
Albania	Mar. 1, 1933	Nov. 14, 1935	49 Stat. 3313.
Argentina	Sept. 26, 1896.	July 2, 1900	31 Stat. 1883.
	Jan. 21, 1972	Sept. 15, 1972.	23 UST 3501.
Australia	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
	May 14, 1974	May 8, 1976	TIAS 8234.
Austria	Jan. 31, 1930	Sept. 11, 1930.	46 Stat. 2779.
	May 19, 1934	Sept. 5, 1934	49 Stat. 2710.
Bahamas	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Barbados	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Belgium	Oct. 26, 1901	July 14, 1902	32 Stat. 1984.
	June 20, 1935.	Nov. 7, 1935	49 Stat. 3276.
	Nov. 14, 1963	Dec. 26, 1964	15 UST 2252.
Bolivia	Apr. 21, 1900	Jan. 22, 1902	32 Stat. 1857.
Brazil	Jan. 13, 1961	Dec. 17, 1964	15 UST 2093.
	June 18, 1962.	Dec. 17, 1964.	15 UST 2112.
Bulgaria	Mar. 19, 1924.	June 24, 1924.	43 Stat. 1886.
	June 8, 1934	Aug. 15, 1935.	49 Stat. 3250.
Burma	Dec. 22, 1931.	Nov. 1, 1941	47 Stat. 2122.
Canada	Aug. 9, 1842	.....	8 Stat. 572.
	July 12, 1889	.....	26 Stat. 1508.
	Dec. 13, 1900	.....	32 Stat. 1864.
	Apr. 12, 1905	.....	34 Stat. 2903.
	May 18, 1908	June 30, 1908.	35 Stat. 2035.
	May 15, 1922	Nov. 3, 1922	42 Stat. 2224.
	Jan. 8, 1925	July 27, 1925	44 Stat. 2100.
	Oct. 26, 1951	July 11, 1952	3 UST 2826.
	Dec. 3, 1971	Mar. 22, 1976.	TIAS 8237.
	June 28, 1974.	Mar. 22, 1976.	TIAS 8237.
	July 9, 1974	Mar. 22, 1976.	TIAS 8237.
Chile	Apr. 17, 1900	June 26, 1902.	32 Stat. 1850.
Colombia	May 7, 1888	Jan. 11, 1891	26 Stat. 1534.
	Sept. 9, 1940	July 6, 1943	57 Stat. 824.
Congo	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
(Brazzaville)	Jan. 15, 1929	May 19, 1929	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936.	50 Stat. 1117.
Costa Rica	Nov. 10, 1922	Apr. 27, 1923	43 Stat. 1621.
Cuba	Apr. 6, 1904	Mar. 2, 1905	33 Stat. 2265.
	Dec. 6, 1904	Mar. 2, 1905	33 Stat. 2273.
	Jan. 14, 1926	June 18, 1926.	44 Stat. 2392.
Cyprus	Dec. 22, 1931	June 24, 1935.	47 Stat. 2122.
Czechoslovakia	July 2, 1925	Mar. 29, 1926.	44 Stat. 2367.
	Apr. 29, 1935	Aug. 28, 1935.	49 Stat. 3253.
Denmark	June 22, 1972.	July 31, 1974	TIAS 7864.
Dominican Republic.	June 19, 1909.	Aug. 2, 1910	36 Stat. 2468.
Ecuador	June 28, 1872.	Nov. 12, 1873	18 Stat. 199.
	Sept. 22, 1939.	May 29, 1941	55 Stat. 1196.
Egypt	Aug. 11, 1874.	Apr. 22, 1875	19 Stat. 572.
El Salvador	Apr. 18, 1911	July 10, 1911	37 Stat. 1516.
Estonia	Nov. 8, 1923	Nov. 15, 1924	43 Stat. 1849.
	Oct. 10, 1934	May 7, 1935	49 Stat. 3190.
Fiji	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
		Aug. 17, 1973.	TIAS 7707.
Finland	Aug. 1, 1924	Mar. 23, 1925.	44 Stat. 2002.
	May 17, 1934	Aug. 10, 1934.	49 Stat. 2690.
France	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929.	May 19, 1929.	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936.	50 Stat. 1117.
	Feb. 12, 1970	Apr. 3, 1971	22 UST 407.
Gambia	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Germany, Federal Republic of.	July 12, 1930.	Apr. 26, 1931.	47 Stat. 1862.
Ghana	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Granada	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Greece	May 6, 1931	Nov. 1, 1932	47 Stat. 2185.
	Sept. 2, 1937	Sept. 2, 1937	51 Stat. 357.
Guatemala	Feb. 27, 1903	Aug. 15, 1903	33 Stat. 2147.
	Feb. 20, 1940	Mar. 13, 1941	55 Stat. 1097.
Guyana	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Haiti	Aug. 9, 1904	June 28, 1905.	34 Stat. 2858.
Honduras	Jan. 15, 1909	July 10, 1912	37 Stat. 1616.
	Feb. 21, 1927	June 5, 1928	45 Stat. 2489.
Hungary	July 3, 1856	Dec. 13, 1856	11 Stat. 691.
Iceland	Jan. 6, 1902	.....	32 Stat. 1906.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	Dec. 22, 1931.	Mar. 9, 1942	47 Stat. 2122.
Iraq	June 7, 1934	Apr. 23, 1936	49 Stat. 3380.
Ireland	July 12, 1889	.....	26 Stat. 1508.
	Dec. 13, 1900	.....	32 Stat. 1864.
	Apr. 12, 1905	.....	34 Stat. 2903.
Israel	Dec. 10, 1962	Dec. 5, 1963	14 UST 1707.
		Apr. 11, 1967	18 UST 382.
Italy	Mar. 23, 1868.	Sept. 17, 1868.	15 Stat. 629.
	Jan. 21, 1869	May 7, 1869	16 Stat. 767.
	June 11, 1884.	Apr. 24, 1885	24 Stat. 1001.
		Apr. 17, 1946	61 Stat. 3687.
	Jan. 18, 1973	Mar. 11, 1975	TIAS 8052.
Jamaica	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Japan	Apr. 29, 1886.	Nov. 26, 1886.	24 Stat. 1015.
	May 17, 1906.	Oct. 5, 1906	34 Stat. 2951.
Kenya	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
		Aug. 19, 1965.	TIAS 5916.
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935.	49 Stat. 3131.
Lesotho	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939.	54 Stat. 1733.
Liechtenstein	May 20, 1936.	June 28, 1937.	50 Stat. 1337.
Lithuania	Apr. 9, 1924	Aug. 23, 1924.	43 Stat. 1835.
	May 17, 1934.	Jan. 8, 1935	49 Stat. 3077.
Luxembourg	Oct. 29, 1883.	Aug. 13, 1884.	23 Stat. 808.
	Apr. 24, 1935.	Mar. 3, 1936	49 Stat. 3355.
Malawi	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
		Apr. 4, 1967	18 UST 1822.
Malaysia	Dec. 22, 1931.	.....	47 Stat. 2122.
Malta	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Mauritius	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Mexico	Feb. 22, 1899.	Apr. 22, 1899.	31 Stat. 1818.
	June 25, 1902.	Apr. 13, 1903.	TS 421.
	Dec. 23, 1925.	July 11, 1926.	44 Stat. 2409.
	Aug. 16, 1939.	Apr. 14, 1941.	55 Stat. 1133.
Monaco	Feb. 15, 1939.	Mar. 28, 1940.	54 Stat. 1780.
Nauru	Dec. 22, 1931.	.....	47 Stat. 2122.
Netherlands	June 2, 1887	July 11, 1889	26 Stat. 1481.
	Jan. 18, 1904.	Aug. 28, 1904.	33 Stat. 2257.
New Zealand	July 12, 1889.	.....	26 Stat. 1508.
	Dec. 13, 1900.	.....	32 Stat. 1864.
	Apr. 12, 1905.	.....	34 Stat. 2903.
	Jan. 12, 1970.	Dec. 8, 1970	22 UST 1.
Nicaragua	Mar. 1, 1905	July 14, 1907	35 Stat. 1869.
Nigeria	Dec. 22, 1931.	June 24, 1935.	47 Stat. 2122.
Norway	June 7, 1893	Dec. 8, 1893	28 Stat. 1187.
	Dec. 10, 1904.	Apr. 4, 1905	34 Stat. 2865.
	Feb. 1, 1938	Aug. 6, 1938	53 Stat. 1561.
Pakistan	Dec. 22, 1931.	Mar. 9, 1942	47 Stat. 2122.
Panama	May 25, 1904.	May 8, 1905	34 Stat. 2851.

Country	Date signed	Entered into force	Citation
Papua New Guinea.	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Paraguay	Mar. 26, 1913.	Jan. 17, 1914..	38 Stat. 1754.
	May 24, 1973..	May 7, 1974....	TIAS 7838.
Peru	Nov. 28, 1899..	Feb. 22, 1901..	31 Stat. 1921.
Poland	Nov. 22, 1927..	July 6, 1929....	46 Stat. 2282.
	Apr. 5, 1935....	June 5, 1936...	49 Stat. 3394.
Portugal	May 7, 1908....	Nov. 14, 1908..	35 Stat. 2071.
Romania	July 23, 1924..	Apr. 7, 1925....	44 Stat. 2020.
	Nov. 10, 1936..	July 27, 1937..	50 Stat. 1349.
San Marino	Jan. 10, 1906..	July 8, 1908....	35 Stat. 1971.
	Oct. 10, 1934..	June 28, 1935.	49 Stat. 3198.
Sierra Leone	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Singapore	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
		June 10, 1969.	20 UST 2764.
South Africa	Dec. 18, 1947..	Apr. 30, 1951..	2 UST 884.
Spain	June 15, 1904.	Apr. 6, 1908....	35 Stat. 1947.
	May 29, 1970..	June 16, 1971.	22 UST 737.
Sri Lanka	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Surinam	June 2, 1887...	July 11, 1889..	26 Stat. 1481.
	Jan. 18, 1904..	Aug. 28, 1904..	33 Stat. 2257.
Swaziland	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
		July 28, 1970..	21 UST 1930.
Sweden	Oct. 24, 1961..	Dec. 3, 1963....	14 UST 1845.
Switzerland	May 14, 1900..	Mar. 29, 1901.	31 Stat. 1928.
	Jan. 10, 1935..	May 16, 1935..	49 Stat. 3192.
	Jan. 31, 1940..	Apr. 8, 1941....	55 Stat. 1140.
Tanzania	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
		Dec. 6, 1965....	TIAS 5946.
Thailand	Dec. 30, 1922..	Mar. 24, 1924.	43 Stat. 1749.
Tonga	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Trinidad and Tobago.	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Turkey	Aug. 6, 1923....	Aug. 18, 1934..	49 Stat. 2692.
United Arab Republic.	Aug. 11, 1874..	Apr. 22, 1875..	19 Stat. 572.
United Kingdom.	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.
Uruguay	Mar. 19, 1905.	June 4, 1908...	35 Stat. 2028.
	June 8, 1972...	Jan. 1, 1977....	TIAS 8468.
Venezuela	Jan. 11, 21, 1922.	Apr. 14, 1923..	43 Stat. 1698.
Yugoslavia	Oct. 25, 1901..	June 12, 1902.	32 Stat. 1890.
Zambia	Dec. 22, 1931..	June 24, 1935.	47 Stat. 2122.

Convention on Extradition

The United States is a party to the Multilateral Convention on Extradition signed at Montevideo on Dec. 26, 1933, entered into force for the United States on Jan. 25, 1935. 49 Stat. 3111.

Other states which have become parties:

Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama.

§ 3182. Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

(June 25, 1948, ch. 645, 62 Stat. 822.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 662 (R.S. § 5278).

Last sentence as to costs and expenses to be paid by the demanding authority was incorporated in section 3195 of this title.

Word "District" was inserted twice to make section equally applicable to fugitives found in the District of Columbia.

"Thirty days" was substituted for "six months" since, in view of modern conditions, the smaller time is ample for the demanding authority to act.

Minor changes were made in phraseology.

Cross References

Constitutional provision enforced by this section, see Const. Art. 4, § 2, cl. 2.

Juvenile delinquents, surrender to State authorities, see section 5001 of this title.

Resistance to extradition agent, see section 1502 of this title.

Surrender of youthful offenders to State authorities, see section 5001 of this title.

Transportation of fugitive by receiving agent, see section 3194 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3194, 5001 of this title.

§ 3183. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States or the Panama Canal Zone, demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

(June 25, 1948, ch. 645, 62 Stat. 822.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 662c (Mar. 22, 1934, ch. 73, § 2, 48 Stat. 455).

Said section 662c was incorporated in this section and sections 752 and 3195 of this title.

Provision as to costs or expenses to be paid by the demanding authority were incorporated in section 3196 of this title.

Reference to the Philippine Islands was deleted as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

The attention of Congress is directed to the probability that this section may be of little, if any, possible use in view of present world conditions.

Minor changes were made in phraseology.

CROSS REFERENCES

Provisional arrest, obtained by telegraph, see section 3187 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3187 of this title.

§ 3184. Fugitives from foreign country to United States

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

(June 25, 1948, ch. 645, 62 Stat. 822; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 651 (R.S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656).

Minor changes of phraseology were made.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner" in two instances.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Arrest, power of courts and magistrates, see section 3041 of this title.

Surrender of fugitive to agent of foreign government, see section 3186 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3186 of this title.

§ 3185. Fugitives from country under control of United States into the United States

Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

(1) Murder and assault with intent to commit murder;

(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

(4) Forgery or altering and uttering what is forged or altered;

(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

(6) Larceny or embezzlement of an amount not less than $100 in value;

(7) Robbery;

(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

(11) Perjury or the subornation of perjury;

(12) Rape;

(13) Arson;

(14) Piracy by the law of nations;

(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

This chapter, so far as applicable, shall govern proceedings authorized by this section.

Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

(June 25, 1948, ch. 645, 62 Stat. 823; May 24, 1949, ch. 139, § 49, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 652 (R.S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656).

Reference to territory of the United States and the District of Columbia was omitted as covered by definitive section 5 of this title.

Changes were made in phraseology and arrangement.

1949 ACT

This section [section 49] corrects typographical errors in section 3185 of title 18, U.S.C., by transferring to subdivision (3) the words, "indebtedness, bank notes, or other instruments of public", from subdivision (2) of such section where they had been erroneously included.

AMENDMENTS

1949—Subds. (2) and (3). Act May 24, 1949, transferred from subd. (2) to subd. (3) the words "indebtedness, bank notes, or other instruments of public".

CROSS REFERENCES

Extradition of fugitives from justice, see section 3042 of this title.

Surrender of fugitive to agent of foreign government, see section 3186 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3186 of this title.

§ 3186. Secretary of State to surrender fugitive

The Secretary of State may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 653 (R.S. § 5272).

Changes were made in phraseology and surplusage was deleted.

§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

The provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662d (Mar. 22, 1934, ch. 73, § 3, 48 Stat. 455).

Provision for expense to be borne by the demanding authority is incorporated in section 3195 of this title.

Changes were made in phraseology and arrangement.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 3188. Time of commitment pending extradition

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 654 (R.S. § 5273).

Changes in phraseology only were made.

§ 3189. Place and character of hearing

Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 657 (Aug. 3, 1882, ch. 378, § 1, 22 Stat. 215).

First word "All" was omitted as unnecessary.

§ 3190. Evidence on hearing

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be re-

ceived and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 655 (R.S. § 5271; Aug. 3, 1882, ch. 378, § 5, 22 Stat. 216).

Unnecessary words were deleted.

§ 3191. Witnesses for indigent fugitives

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

(June 25, 1948, ch. 645, 62 Stat. 825; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 656 (Aug. 3, 1882, ch. 378, § 3, 22 Stat. 215).

Words "that similar" after "manner" were omitted as unnecessary.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Witness fees for indigent defendants, generally, see rule 17, Appendix to this title.

§ 3192. Protection of accused

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 659 (R.S. § 5275).

Words "crimes or" before "offenses" were omitted as unnecessary.

§ 3193. Receiving agent's authority over offenders

A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 660 (R.S. § 5276).

Words "jurisdiction of the" were omitted in view of the definition of United States in section 5 of this title.

Minor changes only were made in phraseology.

CROSS REFERENCES

Powers of United States marshals, see section 3053 of this title.

United States marshals generally, see section 561 et seq. of Title 28, Judiciary and Judicial Procedure.

EX. ORD. NO. 11517. ISSUANCE AND SIGNATURE BY SECRETARY OF STATE OF WARRANTS APPOINTING AGENTS TO RETURN FUGITIVES FROM JUSTICE EXTRADITED TO UNITED STATES

Ex. Ord. No. 11517, Mar. 19, 1970, 35 F.R. 4937, provided:

WHEREAS the President of the United States, under section 3192 of Title 18, United States Code, has been granted the power to take all necessary measures for the transportation, safekeeping and security against lawless violence of any person delivered by any foreign government to an agent of the United States for return to the United States for trial for any offense of which he is duly accused; and

WHEREAS fugitives from justice in the United States whose extradition from abroad has been requested by the Government of the United States and granted by a foreign government are to be returned in the custody of duly appointed agents in accordance with the provisions of section 3193 of Title 18, United States Code; and

WHEREAS such duly appointed agents under the provisions of the law mentioned above, being authorized to receive delivery of the fugitive in behalf of the United States and to convey him to the place of his trial, are given the powers of a marshal of the United States in the several districts of the United States through which it may be necessary for them to pass with such prisoner, so far as such power is requisite for the prisoner's safekeeping; and

WHEREAS such warrants serve as a certification to the foreign government delivering the fugitives to any other foreign country through which such agents may pass, and to authorities in the United States of the powers therein conferred upon the agents; and

WHEREAS it is desirable by delegation of functions heretofore performed by the President to simplify and thereby expedite the issuance of such warrants to agents in the interests of the prompt return of fugitives to the United States:

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of State is hereby designated and empowered to issue and sign all warrants appointing agents to receive, in behalf of the United States, the delivery in extradition by a foreign government of any person accused of a crime committed within the United States, and to convey such person to the place of his trial.

SEC. 2. Agents appointed in accordance with section 1 of this order shall have all the powers conferred in respect of such agents by applicable treaties of the United States and by section 3193 of Title 18, United States Code, or by any other provisions of United States law.

SEC. 3. Executive Order No. 10347, April 18, 1952, as amended by Executive Order No. 11354, May 23, 1967, is further amended by deleting numbered paragraph 4 and renumbering paragraphs 5 and 6 as paragraphs 4 and 5, respectively.

RICHARD NIXON.

§ 3194. Transportation of fugitive by receiving agent

Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 663 (R.S. § 5279).

Last sentence of said section 663, relating to rescue of such fugitive, was omitted as covered by section 752 of this title, the punishment provision of which is based on later statutes. (See reviser's note under that section.)

Minor changes were made in phraseology.

§ 3195. Payment of fees and costs

All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate, shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.

(June 25, 1948, ch. 645, 62 Stat. 825; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 662, 662c, 662d, 668 (R.S. § 5278; Aug. 3, 1882, ch. 378, § 4, 22 Stat. 216; June 28, 1902, ch. 1301, § 1, 32 Stat. 475; Mar. 22, 1934, ch. 73, §§ 2, 3, 48 Stat. 455).

First paragraph of this section consolidates provisions as to costs and expenses from said sections 662, 662c, and 662d.

Minor changes were made in phraseology and surplusage was omitted.

Remaining provisions of said sections 662, 662c, and 662d of title 18, U.S.C., 1940 ed., are incorporated in sections 752, 3182, 3183, and 3187 of this title.

The words "or the Department of Justice as the case may be" were added at the end of the second paragraph in conformity with the appropriation acts of recent years. See for example act July 5, 1946, ch. 541, title II, 60 Stat. 460.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner" in two instances.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of a date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 211—JURISDICTION AND VENUE

Sec.
3231. District courts.
3232. District of offense—Rule.
3233. Transfer within district—Rule.
3234. Change of venue to another district—Rule.
3235. Venue in capital cases.
3236. Murder or manslaughter.
3237. Offenses begun in one district and completed in another.
3238. Offenses not committed in any district.
3239. Threatening communications.
3240. Creation of new district or division.
3241. Jurisdiction of offenses under certain sections.
3242. Indians committing certain offenses; acts on reservations.
3243. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations.

§ 3231. District courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on section 588d of title 12, U.S.C., 1940 ed., Banks and Banking; title 18, U.S.C., 1940 ed., §§ 546, 547 (Mar. 4, 1909, ch. 321, §§ 326, 340, 35 Stat. 1151, 1153; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; May 18, 1934, ch. 304, § 4, 48 Stat. 783).

This section was formed by combining sections 546 and 547 of title 18, U.S.C., 1940 ed., with section 588d of title 12, U.S.C., Banks and Banking, with no change of substance.

The language of said section 588d of title 12, U.S.C., 1940 ed., which related to bank robbery, or killing or kidnapping as an incident thereto (see section 2113, of this title), and which read "Jurisdiction over any offense defined by sections 588b and 588c of this title shall not be reserved exclusively to courts of the United States" was omitted as adequately covered by this section.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment. See Senate Report No. 1620, amendment No. 10, 80th Cong.

CROSS REFERENCES

Civil jurisdiction of Federal courts, see section 1331 et seq. of Title 28, Judiciary and Judicial Procedure.

Consular courts, jurisdiction and procedure, see section 141 et seq. of Title 22, Foreign Relations and Intercourse.

Exclusive jurisdiction of Federal courts, see sections 1251, 1333, 1334, 1338, 1351, 1355, 1356 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of juvenile delinquents, see section 5033 of this title.

Jurisdiction over felonies in Yellowstone National Park, see section 131 of Title 28, Judiciary and Judicial Procedure.

Refusal to appear or testify before court-martial military commission, etc., jurisdiction of offense, see section 847 of Title 10, Armed Forces.

Special maritime and territorial jurisdiction of the United States, see section 7 of this title.

United States commissioners, jurisdiction to try petty offenses, see section 3401 of this title.

Venue of civil actions, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

Wire or oral communications, authorization for interception, to provide evidence of certain Federal and State offenses, see section 2516 of this title.

§ 3232. District of offense—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Proceedings to be in district and division in which offense committed, Rule 18.

(June 25, 1948, ch. 645, 62 Stat. 826.)

§ 3233. Transfer within district—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Arraignment, plea, trial, sentence in district of more than one division, Rule 19.

(June 25, 1948, ch. 645, 62 Stat. 826.)

REFERENCES IN TEXT

Rule 19 of the Federal Rules of Criminal Procedure, referred to in text, was rescinded Feb. 28, 1966, eff. July 1, 1966.

CROSS REFERENCES

Districts containing more than one division; venue, see sections 1393 and 1441 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Time of motion to transfer, see rule 22, Appendix to this title.

Transfer from the district or division, see rule 21.

§ 3234. Change of venue to another district—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Plea or disposal of case in district other than that in which defendant was arrested, Rule 20.

(June 25, 1948, ch. 645, 62 Stat. 826.)

FEDERAL RULES OF CRIMINAL PROCEDURE

Time of motion to transfer, see rule 22, Appendix to this title.

Transfer from the district or division for trial, see rule 21.

§ 3235. Venue in capital cases

The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on section 101 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 40, 36 Stat. 1100).

CROSS REFERENCES

Change of venue in civil actions, see section 1404 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue of criminal prosecutions, see rule 18 et seq., Appendix to this title.

§ 3236. Murder or manslaughter

In all cases of murder or manslaughter, the offense shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered or other means employed which caused the death, without regard to the place where the death occurs.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 553 (Mar. 4, 1909, ch. 321, § 336, 35 Stat. 1152).

§ 3237. Offenses begun in one district and completed in another

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves.

(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1954, or where an offense involves use of the mails and is an offense described in section 7201 or 7206(1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law), and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

(June 25, 1948, ch. 645, 62 Stat. 826; Aug. 6, 1958, Pub. L. 85-595, 72 Stat. 512; Nov. 2, 1966, Pub. L. 89-713, § 2, 80 Stat. 1108.)

HISTORICAL AND REVISION NOTES

Based on section 103 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 42, 36 Stat. 1100).

Section was completely rewritten to clarify legislative intent and in order to omit special venue provisions from many sections.

The phrase "committed in more than one district" may be comprehensive enough to include "begun in one district and completed in another", but the use of both expressions precludes any doubt as to legislative intent.

Rules 18-22 of the Federal Rules of Criminal Procedure are in accord with this section.

The last paragraph of the revised section was added to meet the situation created by the decision of the Supreme Court of the United States in United States v. Johnson, 1944, 65 S. Ct. 249, 89 L. Ed. 236, which turned on the absence of a special venue provision in the Dentures Act, section 1821 of this revision. The revised section removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the prosecution of offenses to particular districts as in section 1073 of this revision.

REFERENCES IN TEXT

Section 7203 of the Internal Revenue Code of 1954, referred to in subsec. (b), is section 7203 of Title 26, Internal Revenue Code.

Section 7201 or 7206(1), (2), or (5) of such Code, referred to in subsec. (b), are respectively sections 7201 and 7206(1), (2), (5) of Title 26, Internal Revenue Code.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-713 inserted reference to offenses described in section 7203 of the Internal Revenue Code of 1954.

1958—Pub. L. 85-595 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-713 effective on the date of enactment of Pub. L. 89-713, which was approved on Nov. 2, 1966, see section 6 of Pub. L. 89-713, set out as an Effective Date of 1966 Amendment note under section 6091 of Title 26, Internal Revenue Code.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue of criminal prosecutions, see rule 18 et seq., Appendix to this title.

§ 3238. Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

(June 25, 1948, ch. 645, 62 Stat. 826; May 23, 1963, Pub. L. 88-27, 77 Stat. 48.)

HISTORICAL AND REVISION NOTES

Based on section 102 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 41, 36 Stat. 1100).

Words "begun or" were inserted to clarify scope of this section and section 3237 of this title.

This section is similar to section 219 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse, providing in part that unlawful issuance of passports may be prosecuted in the district where the offender may be arrested or in custody. Said provision is therefore omitted as covered by this section. The remaining provisions of said section 219 are incorporated in section 1541 of this title.

AMENDMENTS

1963—Pub. L. 88-27 authorized the trial of offenses not committed in any district in the district in which the offender, or any one of two or more joint offenders, is arrested; an indictment or information to be filed in the district of the last known residence of the offender or of any one of two or more joint offenders where the offender or offenders are not arrested or brought into any district; and an indictment or information to be filed in the District of Columbia where there is no knowledge of the residence of the offender or of any one of two or more joint offenders.

FEDERAL RULES OF CRIMINAL PROCEDURE

Offenses outside a district or state, applicability of rules to, see rule 54, Appendix to this title.

§ 3239. Threatening communications

Any defendant indicted under sections 875, 876 or 877 of this title, with respect to communications originating in the United States, shall, upon motion duly made, be entitled as of right to be tried in the district in which the matter mailed or otherwise transmitted was first set in motion, in the mails or in commerce between the States.

(June 25, 1948, ch. 645, 62 Stat. 827.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 338a, 338b, 408d (July 8, 1932, ch. 464, §§ 1, 2, 47 Stat. 649; May 18, 1934, ch. 300, 48 Stat. 781; June 28, 1935, ch. 326, 49 Stat. 427; May 15, 1939, ch. 133, §§ 1, 2, 53 Stat. 742-744).

Sections 338a, 338b, and 408d of title 18, U.S.C., 1940 ed., were each incorporated in this section and sections 875, 876, and 877 of this title and the parts consolidated with necessary changes of phraseology only.

§ 3240. Creation of new district or division

Whenever any new district or division is established, or any county or territory is transferred from one district or division to another district or division, prosecutions for offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the case to be removed to the new district or division for trial.

(June 25, 1948, ch. 645, 62 Stat. 827; May 24, 1949, ch. 139, § 50, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 121 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 59, 36 Stat. 1103).

Section 121 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, was divided into two sections. Only the portion relating to venue in civil cases was left in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary.

Minor changes of phraseology were made.

1949 ACT

This section [section 50] strikes the second sentence of section 3240 of title 18, U.S.C., as unnecessary. Section "119" of title 28, U.S.C., referred to in such sentence, became section 1404 of title 28 upon its revision and enactment into positive law in 1948, but reference to the latter, in said section 3240 of title 18, U.S.C., is surplusage in view of rule 19 et seq. of the Federal Rules of Criminal Procedure and the remainder of such section 3240.

AMENDMENTS

1949—Act May 24, 1949, struck out former second sentence reading "The transfer of such prosecutions shall be made in the manner provided in section 119 of Title 28" as surplusage.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue of criminal prosecutions, see rule 18 et seq., Appendix to this title.

§ 3241. Jurisdiction of offenses under certain sections

The United States District Court for the Canal Zone and the District Court of the Virgin Islands shall have jurisdiction of offenses under the laws of the United States, not locally inapplicable, committed within the territorial jurisdiction of such courts, and jurisdiction, concurrently with the district courts of the United States, of offenses against the laws of the United States committed upon the high seas.

(June 25, 1948, ch. 645, 62 Stat. 827; July 7, 1958, Pub. L. 85-508, § 12(i), 72 Stat. 348.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 39, 574; sections 23, 101, 1406 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions; section 39 of title 50, U.S.C., 1940 ed., War and National Defense (June 6, 1900, ch. 786, § 4, 31 Stat. 322; Aug. 24, 1912, ch. 387, § 3, 37 Stat. 512; June 15, 1917, ch. 30, title XIII, § 2, 40 Stat. 231; Mar. 2, 1921, ch. 110, 41 Stat. 1203; June 22, 1936, ch. 699, § 28, 49 Stat. 1814).

Section consolidates portions of sections 39 and 574 of title 18, U.S.C., 1940 ed., with jurisdictional provisions of sections 23, 101, and 1406 of title 48, U.S.C., 1940 ed., and section 39 of title 50 U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation.

The revised section simplifies and clarifies the Federal jurisdiction of the district courts of the Territories and Possessions. The enumeration of sections in section 574 of title 18, U.S.C., 1940 ed., was omitted as incomplete and misleading and the general language of the revised section was made applicable to the Canal Zone.

The phrase "the several courts of the first instance in the Philippine Islands" in section 574 of title 18, U.S.C., 1940 ed., was omitted as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

The last sentence of section 574 of title 18, U.S.C., 1940 ed., with reference to the powers of district attorneys was omitted as unnecessary and otherwise covered by sections 403 and 404 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse.

Definition of United States in section 39 of title 18, U.S.C., 1940 ed., is incorporated in section 5 of this title.

AMENDMENTS

1958—Pub. L. 85-508 eliminated provisions which related to the District Court for the Territory of Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959 upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding former section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Virgin Islands District Court, see section 1406 of Title 48, Territories and Insular Possessions.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of rules, see note by Advisory Committee under rule 54, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1251.

§ 3242. Indians committing certain offenses; acts on reservations

All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.

(June 25, 1948, ch. 645, 62 Stat. 827; May 24, 1949, ch. 139, § 51, 63 Stat. 96; Nov. 2, 1966, Pub. L. 89-707, § 2, 80 Stat. 1101; May 29, 1976, Pub. L. 94-297, § 4, 90 Stat. 586.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 548 (Mar. 4, 1909, ch. 321, § 328, 35 Stat. 1151; June 1932, ch. 284, 47 Stat. 337).

The provisions defining rape in accordance with the law of the State and prescribing imprisonment at the discretion of the court for rape by an Indian upon an Indian are now included in section 1153 of this title. (See also section 6 of this title.)

Section 549 of said title 18, relating to crimes in Indian reservations in South Dakota, was omitted as covered by section 1153 of this title. Accordingly the last sentence of said section 548, extending this section to prosecutions of Indians in South Dakota, was also omitted as unnecessary because this section is sufficient and applicable. Other provisions of said section 548 are incorporated in sections 1151 and 1153 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 51] conforms section 3242 of title 18, U.S.C., with sections 1151 and 1153 of such title, thus eliminating inconsistency and ambiguity with respect to the definition of Indian country.

AMENDMENTS

1976—Pub. L. 94-297 substituted provision setting out reference to offenses listed in the first paragraph

of and punishable under section 1153 of this title, for provision specifically enumerating the covered offenses.

1966—Pub. L. 89-707 added carnal knowledge and assault with intent to commit rape as offenses cognizable within the exclusive jurisdiction of the United States when committed on and within the Indian country.

1949—Act May 24, 1949, substituted "within the Indian country" for "within any Indian reservation, including rights-of-way running through the reservation,".

CROSS REFERENCES

Offenses committed within Indian country, see section 1153 of this title.

§ 3243. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

(June 25, 1948, ch. 645, 62 Stat. 827.)

HISTORICAL AND REVISION NOTES

Based on section 217a of title 25, U.S.C., 1940 ed., Indians (June 8, 1940, ch. 276, 54 Stat. 249).

The attention of Congress is directed to consideration of the question whether this section should be broadened and made applicable to all states rather than only to Kansas. Such change was not regarded as within the scope of this revision.

Changes were made in phraseology.

CROSS REFERENCES

Offenses committed within Indian country, see section 1153 of this title.

CHAPTER 213—LIMITATIONS

Sec.
3281. Capital offenses.
3282. Offenses not capital.
3283. Customs and slave trade violations.
3284. Concealment of bankrupt's assets.
3285. Criminal contempt.
3286. Seduction on vessel of United States.
3287. Wartime suspension of limitations.
3288. Reindictment where defect found after period of limitations.[1]
3289. Reindictment where defect found before period of limitations.[1]
3290. Fugitives from justice.
3291. Nationality, citizenship and passports.

AMENDMENTS

1951—Act June 30, 1951, ch. 194, § 2, 65 Stat. 107, added item 3291.

§ 3281. Capital offenses

An indictment for any offense punishable by death may be found at any time without limitation except for offenses barred by the provisions of law existing on August 4, 1939.

(June 25, 1948, ch. 645, 62 Stat. 827.)

[1] Section catchline amended without amending analysis.

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 581a, 581b (Aug. 4, 1939, ch. 419, §§ 1, 2, 53 Stat. 1198).

Sections 581a and 581b of title 18, U.S.C., 1940 ed., were consolidated into this section without change of substance.

CROSS REFERENCES

Fugitives from justice, no limitations applicable, see section 3290 of this title.

§ 3282. Offenses not capital

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

(June 25, 1948, ch. 645, 62 Stat. 828; Sept. 1, 1954, ch. 1214, § 12(a), formerly § 10(a), 68 Stat. 1145, renumbered Sept. 26, 1961, Pub. L. 87-299, § 1, 75 Stat. 648.)

HISTORICAL AND REVISION NOTES

Based on section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, and on title 18, U.S.C., 1940 ed., § 582 (R.S. § 1044; Apr. 13, 1876, ch. 56, 19 Stat. 32; Nov. 17, 1921, ch. 124, § 1, 42 Stat. 220; Dec. 27, 1927, ch. 6, 45 Stat. 51; Oct. 14, 1940, ch. 876, title I, subchap. III, § 346(g), 54 Stat. 1167).

Section 582 of title 18, U.S.C., 1940 ed., and section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, were consolidated. "Except as otherwise expressly provided by law" was inserted to avoid enumeration of exceptive provisions.

The proviso contained in the act of 1927 "That nothing herein contained shall apply to any offense for which an indictment has been heretofore found or an information instituted, or to any proceedings under any such indictment or information," was omitted as no longer necessary.

In the consolidation of these sections the 5-year period of limitation for violations of the Nationality Code, provided for in said section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, is reduced to 3 years. There seemed no sound basis for considering 3 years adequate in the case of heinous felonies and gross frauds against the United States but inadequate for misuse of a passport or false statement to a naturalization examiner.

AMENDMENTS

1954—Act Sept. 1, 1954, changed the limitation period from three years to five years.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 12(b) of act Sept. 1, 1954, formerly section 10(b), as renumbered by Pub. L. 87-299, § 1, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to offenses (1) committed on or after September 1, 1954, or (2) committed prior to such date, if on such date prosecution therefor is not barred by provisions of law in effect prior to such date."

FUGITIVES FROM JUSTICE

Statutes of limitations as not extending to persons fleeing from justice, see section 3290 of this title.

OFFENSES AGAINST INTERNAL SECURITY

Limitation period in connection with offenses against internal security, see section 783 of Title 50, War and National Defense.

SECTIONS 792, 793, AND 794 OF THIS TITLE; LIMITATION PERIOD

Limitation period in connection with sections 792, 793, and 794 of this title, see note under section 792.

CROSS REFERENCES

Antitrust law violations, suspension of limitation periods, see section 16 note of Title 15, Commerce and Trade.

Concealment of bankrupt's assets as continuing offense, see section 3284 of this title.

Internal revenue violations, see section 6531 of Title 26, Internal Revenue Code.

Offenses arising under—

Bankruptcy laws, see section 151 et seq. of this title.

Copyright laws, see section 115 of Title 17, Copyrights.

Internal revenue laws, see section 6531 of Title 26, Internal Revenue Code.

Wartime suspension of limitations, see section 3287 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Limitation periods not affected by procedure governing pleadings and motions, see rule 12, Appendix to this title.

Motion raising defenses, see rule 12.

Pleas, demurrers, and motions to quash abolished, see rule 12.

§ 3283. Customs and slave trade violations

No person shall be prosecuted, tried or punished for any violation of the customs laws or the slave trade laws of the United States unless the indictment is found or the information is instituted within five years next after the commission of the offense.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 584 (R.S. § 1046; July 5, 1884, ch. 225, § 2, 23 Stat. 122).

Words "customs laws" were substituted for "revenue laws," since different limitations are provided for internal revenue violations by section 3748 of title 26, U.S.C., 1940 ed., Internal Revenue Code.

This section was held to apply to offenses under the customs laws. Those offenses are within the term "revenue laws" but not within the term "internal revenue laws". *United States* v. *Hirsch* (1879, 100 U.S. 33, 25 L. Ed. 539), *United States* v. *Shorey* (1869, Fed. Cas. No. 16,282), and *United States* v. *Platt* (1840, Fed. Cas. No. 16,054a) applied this section in customs cases. Hence it appears that there was no proper basis for the complete elimination from section 584 of title 18, U.S.C., 1940 ed., of the reference to revenue laws.

Meaning of "revenue laws". *United States* v. *Norton* (1876, 91 U.S. 566, 23 L.Ed. 454), quoting Webster that "revenue" refers to "The income of a nation, derived from its taxes, duties, or other sources, for the payment of the national expenses." Quoting *United States* v. *Mayo* (1813, Fed. Cas. No. 15,755) that "revenue laws" meant such laws "as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government."

Definition of revenue. "Revenue" is the income of a State, and the revenue of the Post Office Department, being raised by a tax on mailable matter conveyed in the mail, and which is disbursed in the public service, is as much a part of the income of the government as moneys collected for duties on imports (*United States* v. *Bromley*, 53 U.S. 88, 99, 13 L. Ed. 905).

"Revenue" is the product or fruit of taxation. It matters not in what form the power of taxation may be exercised or to what subjects it may be applied, its exercise is intended to provide means for the support of the Government, and the means provided are necessarily to be regarded as the internal revenue. Duties upon imports are imposed for the same general object and, because they are so imposed, the money thus produced is considered revenue, not because it is derived from any particular source (*United States* v. *Wright*, 1870, Fed. Cas. No. 16,770).

"Revenue law" is defined as a law for direct object of imposing and collecting taxes, dues, imports, and excises for government and its purposes (*In re Mendenhall*, D.C. Mont. 1935, 10 F. Supp. 122).

Act Cong. March 2, 1799, ch. 22, 1 Stat. 627, regulating the collection of duties on imports, is a revenue law, within the meaning of act Cong. April 18, 1818, ch. 70, 3 Stat. 433, providing for the mode of suing for and recovering penalties and forfeitures for violations of the revenue laws of the United States (*The Abigail*, 1824, Fed. Cas. No. 18).

Changes were made in phraseology.

REFERENCES IN TEXT

The customs laws of the United States, referred to in text, are classified generally to Title 19, Customs Duties.

CROSS REFERENCES

Customs offenses, see section 541 et seq. of this title.

Limitations for offenses under internal revenue laws generally, see section 6531 of Title 26, Internal Revenue Code.

Slave trade offenses, see section 1582 et seq. of this title.

§ 3284. Concealment of bankrupt's assets

The concealment of assets of a bankrupt or other debtor shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on section 52(d) of title 11, U.S.C., 1940 ed., Bankruptcy (May 27, 1926, ch. 406, § 11d, 44 Stat. 665; June 22, 1938, ch. 575, § 1, 52 Stat. 856).

The 3-year-limitation provision was omitted as unnecessary in view of the general statute, section 3282 of this title.

The words "or a discharge denied" and "or denial of discharge" were added on the recommendation of the Department of Justice to supply an omission in existing law.

Other subsections of said section 52 of title 11, U.S.C., 1940 ed., are incorporated in sections 151-154 and 3057 of this title.

Other minor changes of phraseology were made.

CROSS REFERENCES

Bankruptcy investigations, see section 3057 of this title.

Five year limitation on offenses relating to bankruptcy, see section 3282 of this title.

Offenses relating to bankruptcy, see section 151 et seq. of this title.

§ 3285. Criminal contempt

No proceeding for criminal contempt within section 402 of this title shall be instituted against any person, corporation or association unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on section 390 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, § 25, 38 Stat. 740).

Word "criminal" was inserted before "contempt" in first line. Words "within section 402 of this title" were inserted after "contempt".

The correct meaning and narrow application of title 28, U.S.C., 1940 ed., § 390, are preserved, as section 389 of that title is incorporated in sections 402 and 3691 of this title.

Words "corporation or association" were inserted after "person", thus embodying applicable definition of section 390a of title 28, U.S.C., 1940 ed. (See reviser's note under section 402 of this title.)

CROSS REFERENCES

Criminal contempts constituting criminal offenses, see section 402 of this title.

Insurance business, application of section to, see sections 1011 to 1015 of Title 15, Commerce and Trade.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt procedure, see rule 42, Appendix to this title.

§ 3286. Seduction on vessel of United States

No person shall be prosecuted, tried, or punished for seduction in violation of section 2198 of this title unless indictment is found or the information is filed within one year after the vessel on which the offense was committed arrives at its port of destination.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 460 (Mar. 4, 1909, ch. 321, § 281, 35 Stat. 1144).

Section 460 of title 18, U.S.C., 1940 ed., was incorporated in this section and sections 2198 and 3614 of this title. Minor changes in phraseology only were made in this section.

Reference to the filing of an information was inserted in view of rule 7 of the Federal Rules of Criminal Procedure.

§ 3287. Wartime suspension of limitations

When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

Definitions of terms in section 103 of title 41 shall apply to similar terms used in this section.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 590a (Aug. 24, 1942, ch. 555, § 1, 56 Stat. 747; July 1, 1944, ch. 358, § 19(b), 58 Stat. 667; Oct. 3, 1944, ch. 479, § 28, 58 Stat. 781).

The phrase "when the United States is at war" was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future. This permitted the elimination of references to dates and to the provision limiting the application of the section to transactions not yet fully barred. When the provisions of the War Contract Settlements Act of 1944, upon which this section is based, are considered in connection with said section 590a which it amends, it is obvious that no purpose can be served now by the provisions omitted.

Phrase (2), reading "or committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States" was derived from section 28 of the Surplus Property Act of 1944 which amended said section 590a of title 18, U.S.C., 1940 ed. This act is temporary by its terms and relates only to offenses committed in the disposition of surplus property thereunder.

The revised section extends its provisions to all offenses involving the disposition of any property, real or personal, of the United States. This extension is more apparent than real since phrase (2), added as the result of said Act, was merely a more specific statement of offenses embraced in phrase (1) of this section.

The revised section is written in general terms as permanent legislation applicable whenever the United States is at war. (See, also, reviser's note under section 284 of this title.)

The last paragraph was added to obviate any possibility of doubt as to meaning of terms defined in section 103 of title 41, U.S.C., 1940 ed., Public Contracts.

Changes were made in phraseology.

CROSS REFERENCES

Termination of war contracts, see section 101 et seq. of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6533.

§ 3288. Indictment where defect found after period of limitations

Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause, after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or, if no regular grand jury is in session in the appropriate jurisdiction when the indictment or information is dismissed, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations.

(June 25, 1948, ch. 645, 62 Stat. 828; Oct. 16, 1963, Pub. L. 88-139, § 2, 77 Stat. 248; Aug. 30, 1964, Pub. L. 88-520, § 1, 78 Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 556a, 587, 589 (Apr. 30, 1934, ch. 170, § 1, 48 Stat. 648; May 10, 1934, ch. 278, §§ 1, 3, 48 Stat. 772; July 10, 1940, ch. 567, 54 Stat. 747).

This section is a consolidation of sections 556a, 587, and 589 of title 18, U.S.C., 1940 ed., without change of

substance. (See reviser's note under section 3289 of this title.)

AMENDMENTS

1964—Pub. L. 88-520 substituted "Indictment" for "Reindictment" in the section catchline, included indictments or informations filed after the defendant waives in open court prosecution by indictment which are dismissed for any error, defect, or irregularity, or are otherwise found defective or insufficient, and substituted provisions authorizing the return of a new indictment in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or, if no regular grand jury is in session when the indictment or information is dismissed, within six calendar months of the date when the next grand jury is convened, for provisions which authorized the return of a new indictment not later than the end of the next succeeding regular session of the court, following the session at which the indictment was found defective or insufficient, during which a grand jury shall be in session.

1963—Pub. L. 88-139 substituted "session" for "term" wherever appearing.

CROSS REFERENCES

Indictment before limitations, see section 3289 of this title.

Limitations for non-capital offenses, see section 3282 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Limitation periods not affected by procedure governing pleadings and motions, see rule 12, Appendix to this title.

Motion to dismiss indictment on objections to grand jury, see rule 6.

§ 3289. Indictment where defect found before period of limitations.

Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause, before the period prescribed by the applicable statute of limitations has expired, and such period will expire within six calendar months of the date of the dismissal of the indictment or information, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the expiration of the applicable statute of limitations, or, if no regular grand jury is in session in the appropriate jurisdiction at the expiration of the applicable statute of limitations, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations.

(June 25, 1948, ch. 645, 62 Stat. 829; Oct. 16, 1963, Pub. L. 88-139, § 2, 77 Stat. 248; Aug. 30, 1964, Pub. L. 88-520, § 2, 78 Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 556a, 588, 589 (Apr. 30, 1934, ch. 170, § 1, 48 Stat. 648; May 10, 1934, ch. 278, §§ 2, 3, 48 Stat. 772).

Consolidation of sections 556a, 588, and 589 of title 18, U.S.C., 1940 ed., without change of substance. The provisions of said section 556a, with reference to time of filing motion, were omitted and numerous changes of phraseology were necessary to effect consolidation, particularly in view of rules 6(b) and 12(b)(2), (3), (5) of the Federal Rules of Criminal Procedure.

Words "regular or special" were omitted and "regular" inserted after "succeeding" to harmonize with section 3288 of this title.

AMENDMENTS

1964—Pub. L. 88-520 substituted "Indictment" for "Reindictment" in the section catchline, included indictments or informations filed after the defendant waives in open court prosecution by indictment which are dismissed for any error, defect, or irregularity, or are otherwise found defective or insufficient, and substituted provisions authorizing, where the period of the statute of limitations will expire within six calendar months of the date of the dismissal, the return of a new indictment within six calendar months of the expiration of the applicable statute of limitations, or, if no regular grand jury is in session at the expiration of the applicable statute of limitations, within six calendar months of the date when the next regular grand jury is convened, for provisions which authorized, where the period of the statute of limitations will expire before the end of the next regular session of the court to which such indictment was returned, the return of a new indictment not later than the end of the next succeeding regular session of the court following the session at which the indictment was found defective or insufficient, during which a grand jury shall be in session.

1963—Pub. L. 88-139 substituted "session" for "term" wherever appearing.

CROSS REFERENCES

Indictment after limitations, see section 3288 of this title.

Limitation for non-capital offenses, see section 3282 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Limitation periods not affected by procedure governing pleadings and motions, see rule 12, Appendix to this title.

Motion to dismiss indictment on objection to grand jury, see rule 6.

§ 3290. Fugitives from justice

No statute of limitations shall extend to any person fleeing from justice.

(June 25, 1948, ch. 645, 62 Stat. 829.)

HISTORICAL AND REVISION NOTES

Based on Title 18, U.S.C., 1940 ed., § 583 (R.S. § 1045).

Said section 583 was rephrased and made applicable to all statutes of limitation and is merely declaratory of the generally accepted rule of law.

CROSS REFERENCES

Absence from district as tolling limitation for prosecution for internal revenue violations, see section 6531 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6531.

§ 3291. Nationality, citizenship and passports.

No person shall be prosecuted, tried, or punished for violation of any provision of sections 1423 to 1428, inclusive, of chapter 69 and sections 1541 to 1544, inclusive, of chapter 75 of title 18 of the United States Code, or for conspiracy to violate any of the afore-mentioned sections, unless the indictment is found or the information is instituted within ten years after the commission of the offense.

(Added June 30, 1951, ch. 194, § 1, 65 Stat. 107.)

CHAPTER 215—GRAND JURY

Sec.
3321. Number of grand jurors; summoning additional jurors.
3322. Number; summoning—Rule.
3323. Objections and motions—Rule.
3324. Foreman and deputy; powers and duties; records—Rule.[1]
3325. Persons present at proceedings—Rule.
3326. Secrecy of proceedings and disclosure—Rule.
3327. Indictment; finding and return—Rule.
3328. Discharging jury and excusing juror—Rule.

Chapter Referred to in Other Sections

This chapter is referred to in section 3334 of this title.

§ 3321. Number of grand jurors; summoning additional jurors

Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If less than sixteen of the persons summoned attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. Whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

(June 25, 1948, ch. 645, 62 Stat. 829.)

Historical and Revision Notes

Based on section 419 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 282, 36 Stat. 1165).

The provisions of the first sentence are embodied in rule 6(a) of the Federal Rules of Criminal Procedure, but it has been retained because of its relation to the remainder of the text which is not covered by said rule.

Cross References

Apportionment of grand jurors within district, see section 1865 of Title 28, Judiciary and Judicial Procedure.

Attendance fees of grand jurors, see section 1871 of Title 28.

Drawing grand jurors, see section 1864 of Title 28.

Exclusion on account of race or color, penalty for, see section 243 of this title.

Fee of marshal for serving venire, see section 1921 of Title 28, Judiciary and Judicial Procedure.

Fees of grand jurors, see section 1871 of Title 28.

Intimidating or influencing grand jurors, see sections 1503 and 1504 of this title.

Ohio grand jurors; place of service; authority of judge to change; see sections 115 and 1865 of Title 28, Judiciary and Judicial Procedure.

Qualifications and exemptions of jurors, see section 1861 of Title 28.

Summons; service and return, see section 1867 of Title 28.

Traveling expenses, see section 1871 of Title 28.

Federal Rules of Criminal Procedure

Challenges of grand jurors, see rule 6, Appendix to this title.

Discharge and excuse of grand jurors, see rule 6.

Summoning grand jurors, see rule 6.

[1] So in original. Does not conform to section catchline.

§ 3322. Number; summoning—(Rule)

See Federal Rules of Criminal Procedure

Summoning grand jury; number of grand jurors, Rule 6(a).

(June 25, 1948, ch. 645, 62 Stat. 829.)

§ 3323. Objections and motions—(Rule)

See Federal Rules of Criminal Procedure

Challenging array of grand jurors or individual grand jurors; motions to dismiss, Rule 6(b).

(June 25, 1948, ch. 645, 62 Stat. 829.)

§ 3324. Foreman and deputies; powers and duties; records—(Rule)

See Federal Rules of Criminal Procedure

Appointment of grand jury foreman and deputy foreman; oaths, affirmations and indictments; records of jurors concurring, Rule 6(c).

(June 25, 1948, ch. 645, 62 Stat. 829.)

§ 3325. Persons present at proceedings—(Rule)

See Federal Rules of Criminal Procedure

Persons who may be present while grand jury is in session; exclusion while jury is deliberating or voting, Rule 6(d).

(June 25, 1948, ch. 645, 62 Stat. 829.)

Federal Rules of Criminal Procedure

Subpena for attendance of witness, see rule 17, Appendix to this title.

§ 3326. Secrecy of proceedings and disclosure—(Rule)

See Federal Rules of Criminal Procedure

Disclosure of proceedings to government attorneys; disclosure by direction of court or permission of defendant; secrecy of indictment, Rule 6(e).

(June 25, 1948, ch. 645, 62 Stat. 829.)

Cross References

Conduct of grand jury proceedings, see section 515 of Title 28, Judiciary and Judicial procedure.

§ 3327. Indictment; finding and return—(Rule)

See Federal Rules of Criminal Procedure

Concurrence of twelve or more jurors in indictment; return of indictment to judge in open court, Rule 6(f).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3328. Discharging jury and excusing juror—(Rule)

See Federal Rules of Criminal Procedure

Discharge of grand jury by court; limitation of service; excusing juror for cause, Rule 6(g).

(June 25, 1948, ch. 645, 62 Stat. 830.)

CHAPTER 216—SPECIAL GRAND JURY

Sec.
3331. Summoning and term.
3332. Powers and duties.
3333. Reports.
3334. General provisions.

Amendments

1970—Pub. L. 91-452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 923, added chapter 216 and items 3331 to 3334.

NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

Pub. L. 91-452, title XII, §§ 1201 to 1211, Oct. 15, 1970, 84 Stat. 960, provided that:

"SEC. 1201. [Establishment] There is hereby established the National Commission on Individual Rights (hereinafter in this title referred to as the 'Commission').

"SEC. 1202. [Membership] The Commission shall be composed of fifteen members appointed as follows:

"(1) four appointed by the President of the Senate from Members of the Senate;

"(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

"(3) seven appointed by the President of the United States from all segments of life in the United States, including but not limited to lawyers, jurists, and policemen, none of whom shall be officers of the executive branch of the Government.

"SEC. 1203. [Chairman; vacancies.] The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

"SEC. 1204. [Study and review of Federal laws and practices relating to individual rights] It shall be the duty of the Commission to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries authorized under chapter 216 of title 18, United States Code, dangerous special offender sentencing under section 3575 of title 18, United States Code, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action. The Commission may also consider other Federal laws and practices which in its opinion may infringe upon the individual rights of the people of the United States. The Commission shall determine which laws and practices are needed, which are effective, and whether they infringe upon the individual rights of the people of the United States.

"SEC. 1205. [Appointment and compensation of Executive Director and staff personnel] (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

"(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code [Title 5, Government Organization and Employees], governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

"(b) In making appointments pursuant to subsection (a) of this section, the Chairman shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

"SEC. 1206. [Compensation; reimbursement for travel, subsistence, and other necessary expenses] (a) A member of the Commission who is a Member of Congress shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

"(b) A member of the Commission from private life shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

"SEC. 1207. [Cooperation of Federal and State agencies] Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

"SEC. 1208. [Interim and final reports; recommendations; termination] The Commission shall make interim reports and recommendations as it deems advisable, but at least every two years, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress at the end of six years following the effective date of this section. Sixty days after the submission of the final report, the Commission shall cease to exist.

"SEC. 1209. [Applicability of conflict-of-interest laws] (a) Except as provided in subsection (b) of this section, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

"(b) The exemption granted by subsection (a) of this section shall not extend—

"(1) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

"(2) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

"SEC. 1210. [Effective date] The foregoing provisions of this title shall take effect on January 1, 1972.

"Sec. 1211. [Authorization of appropriations] There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title."

§ 3331. Summoning and term

(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

(b) If a district court within any judicial circuit fails to extend the term of a special grand

jury or enters an order for the discharge of such grand jury before such grand jury determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

(Added Pub. L. 91-452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 923.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3334 of this title.

§ 3332. Powers and duties

(a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

(Added Pub. L. 91-452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 924.)

REFERENCES IN TEXT

The criminal laws of the United States, referred to in subsec. (a), are classified generally to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3333, 3334 of this title.

§ 3333. Reports

(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or

(2) regarding organized crime conditions in the district.

(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record or be subject to subpena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report. Unauthorized publication may be punished as contempt of the court.

(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a

pending criminal matter, it shall order such report sealed and such report shall not be subject to subpena or public inspection during the pendency of such criminal matter, except upon order of the court.

(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

(f) As used in this section, "public officer or employee" means any officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

(Added Pub. L. 91-452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 924.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3331, 3334 of this title.

§ 3334. General provisions

The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal Procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter.

(Added Pub. L. 91-452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 926.)

CHAPTER 217—INDICTMENT AND INFORMATION

Sec.
3361. Form and contents—Rule.
3362. Waiver of indictment and prosecution on information—Rule.
3363. Joinder of offenses—Rule.
3364. Joinder of defendants—Rule.
3365. Amendment of information—Rule.
3366. Bill of particulars—Rule.
3367. Dismissal—Rule.

§ 3361. Form and contents—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Contents and form; striking surplusage, Rule 7(a), (c), (d).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3362. Waiver of indictment and prosecution on information—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Waiver of indictment for offenses not punishable by death, Rule 7(b).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3363. Joinder of offenses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more offenses in same indictment, Rule 8(a).

Trial together of indictments or informations, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3364. Joinder of defendants—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more defendants charged in same indictment, Rule 8(b).

Relief from prejudicial joinder, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3365. Amendment of information—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Amendment of information, time and conditions, Rule 7(e).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3366. Bill of particulars—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bill of particulars for cause; motion after arraignment; time; amendment, Rule 7(f).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3367. Dismissal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Dismissal filed by Attorney General or United States Attorney, Rule 48.

Dismissal on objection to array of grand jury or lack of legal qualification of individual grand juror, Rule 6(b)(2).

(June 25, 1948, ch. 645, 62 Stat. 830.)

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATES

Sec.
3401. Minor offenses; application of probation laws.
3402. Rules of procedure, practice and appeal.

AMENDMENTS

1968—Pub. L. 90-578, title III, §§ 301(c), 302(c), Oct. 17, 1968, 82 Stat. 1115, 1116, substituted "Trial By United States Magistrates" for "Trial By Commissioners" in the chapter heading, and substituted "Minor offenses" for "Petty offenses" and struck out "fees" following "probation laws" in item 3401.

§ 3401. Minor offenses; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, and under such conditions as may be imposed by the terms of the special designation, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, minor offenses committed within that judicial district.

(b) Any person charged with a minor offense may elect, however, to be tried before a judge of the district court for the district in which the offense was committed. The magistrate shall carefully explain to the defendant that he has a right to trial before a judge of the district court and that he may have a right to trial by jury before such judge and shall not proceed to try the case unless the defendant, after such

explanation, signs a written consent to be tried before the magistrate that specifically waives both a trial before a judge of the district court and any right to trial by jury that he may have.

(c) A magistrate who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate prior to the imposition of sentence.

(d) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to revoke or reinstate the probation of any person granted probation by him.

(e) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(f) As used in this section, the term "minor offenses" means misdemeanors punishable under the laws of the United States, the penalty for which does not exceed imprisonment for a period of one year, or a fine of not more than $1,000, or both, except that such term does not include any offense punishable under any of the following provisions of law: Section 102 of the Revised Statutes, as amended (2 U.S.C. 192); section 314(a) of the Federal Corrupt Practices Act, 1925 (2 U.S.C. 252(a)); and sections 210, 211, 242, 594, 597, 599, 600, 601, 1304, 1504, 1508, 1509, 2234, 2235, and 2236 of title 18, United States Code.

(June 25, 1948, ch. 645, 62 Stat. 830; July 7, 1958, Pub. L. 85-508, § 12(j), 72 Stat. 348; Oct. 17, 1968, Pub. L. 90-578, title III, § 302(a), 82 Stat. 1115.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 576, 576b, 576c, 576d (Oct. 9, 1940, ch. 785, §§ 1, 3-5, 54 Stat. 1058, 1059).

The phrase "the commissioner shall have power to grant probation" was inserted in paragraph (c) in order to make clear the authority of the commissioner to grant probation without application to the District judge.

Four sections were consolidated herein with minor rearrangements and deletion of unnecessary words.

References in Text

Section 314(a) of the Federal Corrupt Practices Act, 1925 (2 U.S.C. 252(a)), referred to in subsec. (f), was repealed by Pub. L. 92-225, title IV, § 405, Feb. 7, 1972, 86 Stat. 20, and is now covered by section 441(a) of Title 2, The Congress.

Amendments

1968—Pub. L. 90-578 substituted "Minor offenses" for "Petty offenses" in the section catchline and deleted therefrom provision for "fees".

Subsec. (a). Pub. L. 90-578 provided for trial by a magistrate rather than a commissioner of minor offenses instead of petty offenses, under such conditions as may be imposed by the terms of the special designation, required imposition of sentence after conviction instead of sentencing of person committing the offense, and omitted provision for trial of offense committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction.

Subsec. (b). Pub. L. 90-578 provided that the person be charged with a minor offense rather than a petty offense, prescribed trial in district court for the district in which the offense was committed, and required an explanation to be given of right to trial before a district court judge with right to jury trial before such judge and that the written consent to trial before the magistrate specifically waive trial before the district court judge and any right to a jury trial.

Subsec. (c). Pub. L. 90-578 substituted authorization for magistrate to conduct presentence investigation for prior provisions making probation laws applicable to persons tried by commissioners having power to grant probation, now incorporated in subsec. (d) of this section.

Subsec. (d). Pub. L. 90-578 incorporated existing provisions of former subsec. (c) of this section in provisions designated as subsec. (d), substituted "magistrate" for prior designation as "commissioner", authorized revocation or reinstatement of probation by the officer granting the probation, and eliminated former provision for receipt of fees provided by law for services as a commissioner.

Subsec. (e). Pub. L. 90-578 substituted requirement that proceedings before magistrates be taken down by a court reporter or recorded by sound recording equipment and provision for availability of a copy of the record of such proceedings for appeal purposes to be paid by the Director at Federal expense when a person is unable to pay or give security therefor for prior provisions making the section inapplicable to the District of Columbia and interpreting it as not repealing or limiting existing jurisdiction, power or authority of commissioners appointed in the several national parks.

Subsec. (f). Pub. L. 90-578 added subsec. (f).

1958—Subsec. (e). Pub. L. 85-508 eliminated provisions which related to commissioners appointed for Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding former section 21 of Title 48, Territories and Insular Possessions.

Cross References

Appointment of United States Magistrates, see section 631 of Title 28, Judiciary and Judicial Procedure.

Compensation of Magistrates, see section 634 of Title 28.

Jurisdiction and powers of Magistrates, see section 636 of Title 28.

Petty offense defined, see section 1 of this title.

Probation, see section 3651 et seq. of this title.

Rules of Procedure for United States Magistrates, see Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proceedings before the United States Magistrate, see rule 5, Appendix to this title.

Trials before Magistrates, applicability of rules, see rule 54.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1011; title 16 sections 460d, 460*l*-6a, 551, 670j, 1338; title 28 section 636.

§ 3402. Rules of procedure, practice and appeal

In all cases of conviction by a United States magistrate an appeal of right shall lie from the judgment of the magistrate to a judge of the district court of the district in which the offense was committed.

The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before magistrates and for taking and hearing of appeals to the judges of the district courts of the United States.

(June 25, 1948, ch. 645, 62 Stat. 831; Oct. 17, 1968, Pub. L. 90-578, title III, § 302(b), 82 Stat. 1116.)

HISTORICAL AND REVISION NOTES

Based on title 18 U.S.C., 1940 ed., § 576a (Oct. 9, 1940, ch. 685, § 2, 54 Stat. 1059).

AMENDMENTS

1968—Pub. L. 90-578 provided that the appeal shall be of right, substituted "a United States magistrate", "magistrate", and "magistrates" for "United States commissioners", "commissioner", and "commissioners", respectively, and provided that the appeals be to the judge of the district court and not to the district court and that the rules of the Supreme Court relate to appeals to the judges of the district courts rather than to the district courts.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Jurisdiction and powers of United States Magistrates, see section 636 of Title 28, Judiciary and Judicial Procedure.

Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, see Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Inapplicable to trials before United States Magistrates under section 3401 of this title and this section, see rule 54, Appendix to this title.

Rules governing criminal proceedings before United States Magistrates applicable to similar proceedings before United States judges, see rule 54.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 460n-8; title 28 section 636.

CHAPTER 221—ARRAIGNMENT, PLEAS AND TRIAL

Sec.
3431. Term of court; power of court unaffected by expiration—Rule.
3432. Indictment and list of jurors and witnesses for prisoner in capital cases.
3433. Arraignment—Rule.
3434. Presence of defendant—Rule.
3435. Receiver of stolen property triable before or after principal.
3436. Consolidation of indictments or informations—Rule.
3437. Severance—Rule.
3438. Pleas—Rule.
3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—Rule.
3440. Defenses and objections determined on motion—Rule.
3441. Jury; number of jurors; waiver—Rule.
3442. Jurors, examination, preemptory challenges; alternates—Rule.
3443. Instructions to jury—Rule.
3444. Disability of judge—Rule.
3445. Motion for judgment of acquittal—Rule.
3446. New trial—Rule.

§ 3431. Term of court; power of court unaffected by expiration—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Expiration of term without significance in criminal cases, Rule 45(c).

(June 25, 1948, ch. 645, 62 Stat. 831.)

REFERENCES IN TEXT

Rule 45(c) of the Federal Rules of Criminal Procedure, referred to in text, was rescinded Feb. 28, 1966, eff. July 1, 1966.

§ 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.

(June 25, 1948, ch. 645, 62 Stat. 831.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 562 (R.S. § 1033).

Words "or other capital offense" inserted after "treason" and "jurors" substituted for "jury". The concluding sentence "When any person is indicted for any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial" was omitted. The change made by the revisers, permitting an additional day's preparation for trial in homicide, kidnapping, rape, and other capital cases seemed not unreasonable.

Words "shall be delivered to him", at end of section, were omitted as unnecessary.

Rule 10 of the Federal Rules of Criminal Procedure requires that the defendant in every case be given a copy of the indictment or information before he is called upon to plead. Thus there is no conflict between the rule and the revised section.

Minor changes in phraseology were made.

CROSS REFERENCES

Qualification and drawing of trial jurors, see section 1861 et seq. of Title 28, Judiciary and Judicial Procedure.

Witnesses and evidence, see section 3481 et seq. of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Copy of indictment or information to defendant before plea, see rule 10, Appendix to this title.

§ 3433. Arraignment—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Reading and furnishing copy of indictment to accused, Rule 10.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3434. Presence of defendant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Right of defendant to be present generally; corporation; waiver, Rule 43.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3435. Receiver of stolen property triable before or after principal

A person charged with receiving or concealing stolen property may be tried either before or after the trial of the principal offender.

(June 25, 1948, ch. 645, 62 Stat. 831.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 101, 467 (Mar. 4, 1909, ch. 321, §§ 48, 288, 35 Stat. 1098, 1145).

Other provisions of sections 101 and 467 of title 18, U.S.C., 1940 ed., were incorporated in sections 641 and 662 of this title.

Necessary changes were made in phraseology.

§ 3436. Consolidation of indictments or informations—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Two or more indictments or informations triable together, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3437. Severance—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Relief from prejudicial joinder of defendants or offenses, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3438. Pleas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Plea of guilty, not guilty, or nolo contendere; acceptance by court; refusal to plead; corporation failing to appear, Rule 11.

Withdrawal of plea of guilty, Rule 32.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motion to dismiss or for appropriate relief substituted for demurrer or dilatory plea or motion to quash, Rule 12.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3440. Defenses and objections determined on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Defenses or objections which may or must be raised before trial; time; hearing; effect of determination; limitations by law unaffected, Rule 12(b).

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3441. Jury; number of jurors; waiver—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Jury trial, waiver, twelve jurors or less by written stipulation, trial by court on general or special findings, Rule 23.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3442. Jurors, examination, peremptory challenges; alternates—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Examination and peremptory challenges of trial jurors; alternate jurors, Rule 24.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3443. Instructions to jury—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Court's instructions to jury, written requests and copies, objections, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3444. Disability of judge—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disability of judge after verdict or finding of guilt, Rule 25.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3445. Motion for judgment of acquittal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motions for directed verdict abolished.

Motions for judgment of acquittal adopted; court may reserve decision; renewal, Rule 29.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3446. New trial—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Granting of new trial, grounds, and motion, Rule 33.

(June 25, 1948, ch. 645, 62 Stat. 832.)

CHAPTER 223—WITNESSES AND EVIDENCE

Sec.

3481. Competency of accused.
3482. Evidence and witnesses—Rule.
3483. Indigent defendants, process to produce evidence—Rule.
3484. Subpoenas—Rule.
3485. Expert witnesses—Rule.
[3486. Repealed.]
3487. Refusal to pay as evidence of embezzlement.
3488. Intoxicating liquor in Indian country as evidence of unlawful introduction.
3489. Discovery and inspection—Rule.
3490. Official record or entry—Rule.
3491. Foreign documents.
3492. Commission to consular officers to authenticate foreign documents.
3493. Deposition to authenticate foreign documents.
3494. Certification of genuineness of foreign document.

Sec.
3495. Fees and expenses of consuls, counsel, interpreters and witnesses.
3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters.
3497. Account as evidence of embezzlement.
3498. Depositions—Rule.
3499. Contempt of court by witness—Rule.
3500. Demands for production of statements and reports of witnesses.
3501. Admissibility of confessions.
3502. Admissibility in evidence of eye witness testimony.
3503. Depositions to preserve testimony.
3504. Litigation concerning sources of evidence.

AMENDMENTS

1970—Pub. L. 91-452, title II, § 228(b), title VI, § 601(b), title VII, § 702(b), Oct. 15, 1970, 84 Stat. 930, 935, 936, added items 3503 and 3504, and struck out item 3486.

1968—Pub. L. 90-351, title II, § 701(b), June 19, 1968, 82 Stat. 211, added items 3501 and 3502.

1957—Pub. L. 85-269, Sept. 2, 1957, 71 Stat. 596, added item 3500.

1954—Act Aug. 20, 1954, ch. 769, § 2, 68 Stat. 746, rephrased item 3486 to read as now set out.

PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Pub. L. 91-452, title V, §§ 501-504, Oct. 15, 1970, 84 Stat. 933, provided that:

"SEC. 501. The Attorney General of the United States is authorized to provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.

"SEC. 502. The Attorney General of the United States is authorized to rent, purchase, modify, or remodel protected housing facilities and to otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be called as Government witnesses, and the families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to have participated in an organized criminal activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness would place his life or person, or the life or person of a member of his family or household, in jeopardy. Any person availing himself of an offer by the Attorney General to use such facilities may continue to use such facilities for as long as the Attorney General determines the jeopardy to his life or person continues.

"SEC. 503. As used in this title, 'Government' means the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof. The offer of facilities to witnesses may be conditioned by the Attorney General upon reimbursement in whole or in part to the United States by any State or any political subdivision, or any department agency, or instrumentality thereof of the cost of maintaining and protecting such witnesses.

"SEC. 504. There is hereby authorized to be appropriated from time to time such funds as are necessary to carry out the provisions of this title."

§ 3481. Competency of accused

In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him.

(June 25, 1948, ch. 645, 62 Stat. 833.)

HISTORICAL AND REVISION NOTES

Based on section 632 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, and section 1200, Art. 42(a), of Title 34, Navy. (Mar. 16, 1878, ch. 37, 20 Stat. 30).

Section was rewritten without change of substance.

FEDERAL RULES OF CRIMINAL PROCEDURE

Harmless and plain error, see rule 52, Appendix to this title.

Instructions, see rule 30.

§ 3482. Evidence and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Competency and privileges of witnesses and admissibility of evidence governed by principles of common law, Rule 26.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 26 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter is now covered by the Federal Rules of Evidence, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Documents, admissibility of, see Federal Rules of Evidence, Title 28, Appendix, Judiciary and Judicial Procedure.

Foreign witnesses, subpoenas and proceedings against disobedient witnesses, see sections 1783 and 1784 of Title 28.

§ 3483. Indigent defendants, process to produce evidence—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for indigent defendants, motion, affidavit, costs, Rule 17(b).

(June 25, 1948, ch. 645, 62 Stat. 833.)

§ 3484. Subpoenas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Form, contents and issuance of subpoena, Rule 17(a).

Service in United States, Rule 17(d), (e), (1).

Service in foreign country, Rule 17(d), (e,2).

Indigent defendants, Rule 17(b).

On taking depositions, Rule 17(f).

Papers and documents, Rule 17(c).

Disobedience of subpoena as contempt of court, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 833.)

CROSS REFERENCES

Subpoenas and proceedings against disobedient foreign witnesses, see sections 1783 and 1784 of Title 28, Judiciary and Judicial Procedure.

§ 3485. Expert witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Selection and appointment of expert witnesses by court or parties; compensation, Rule 28.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 28 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter of this reference is now covered by Federal Rules of Evidence, Title 28, Appendix, Judiciary and Judicial Procedure.

[§ 3486. Repealed. Pub. L. 91-452, title II, § 228(a), Oct. 15, 1970, 84 Stat. 930]

Section, acts June 25, 1948, ch. 645, 62 Stat. 833; Aug. 20, 1954, ch. 769, § 1, 68 Stat. 745; Aug. 28, 1965, Pub. L. 89-141, § 2, 79 Stat. 581, set forth the procedure for the granting of immunity to witnesses compelled to testify or produce evidence in the course of any Congressional investigation, or case or proceeding before any grand jury or court of the United States, involving interference with or endangering of the national security or defense of the United States. See section 6001 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

SAVINGS PROVISION

Repeal by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

§ 3487. Refusal to pay as evidence of embezzlement

The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the General Accounting Office, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement.

(June 25, 1948, ch. 645, 62 Stat. 833.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 180 (Mar. 4, 1909, ch. 321, § 94, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

"General Accounting Office" was substituted for "proper accounting officer of the Treasury".

CROSS REFERENCES

Account as evidence of embezzlement, see section 3497 of this title.

Accounting generally for public money, see section 643 of this title.

Embezzlement of public money, see section 641 of this title.

§ 3488. Intoxicating liquor in Indian country as evidence of unlawful introduction

The possession by a person of intoxicating liquors in Indian country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction.

(June 25, 1948, ch. 645, 62 Stat. 834.)

HISTORICAL AND REVISION NOTES

Based on section 245 of title 25, U.S.C., 1940 ed., Indians (May 18, 1916, ch. 125, § 1, 39 Stat. 124).

The only change made was the insertion of the word "Indian" before "country", to substitute specificity for generality. (See definition of "Indian country" in section 1151 of this title.)

CROSS REFERENCES

Application of Indian liquor laws, see section 1161 of this title.

Indian country defined, see section 1151 of this title.

Possession of intoxicating liquors in Indian country, see section 1156 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1161 of this title.

§ 3489. Discovery and inspection—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Inspection of documents and papers taken from defendant, Rule 16.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3490. Official record or entry—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record or entry as in civil actions, Rule 27.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3491. Foreign documents

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States shall, when duly certified as provided in section 3494 of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 3492 of this title, that such document (or the original thereof in case such document is a copy) satisfies the authentication requirements of the Federal Rules of Evidence, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. Nothing contained herein shall be deemed to require authentication under the provisions of section 3494 of this title of any such foreign documents which may otherwise be properly authenticated by law.

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 52, 63 Stat. 96; Oct. 3, 1964, Pub. L. 88-619, § 2, 78 Stat. 995; Dec. 12, 1975, Pub. L. 94-149, § 3, 89 Stat. 806.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 2, 49 Stat. 1562.)

1949 ACT

This section [section 52] corrects section 3491 of title 18, U.S.C., so that the references therein will be to the correct section numbers in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Pub. L. 94-149 substituted "the authentication requirements of the Federal Rules of Evidence" for "the requirements of section 1732 of title 28".

1964—Pub. L. 88-619 deleted "and section 1741 of Title 28" following "section 3494 of this title" in two places.

1949—Act May 24, 1949, substituted "section 1741" for "section 695e" and "section 1732" for "section 695" wherever appearing.

CROSS REFERENCES

Certification of genuineness of foreign document, see section 3494 of this title.

Commission to consular officers to authenticate foreign documents, see section 3492 of this title.

Foreign documents of record in the State of Vatican City, see section 1204 of Title 22, Foreign Relations and Intercourse.

Foreign documents on record in public offices, see section 1741 of Title 28, Judiciary and Judicial Procedure.

Record made in regular course of business, see section 1732 of Title 28.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, Appendix to this title.

§ 3492. Commission to consular officers to authenticate foreign documents

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories, or on interrogatories partly oral and partly written, pursuant to a commission issued, as hereinafter provided, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the authentication requirements of the Federal Rules of Evidence are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or his attorney, to the opposite party, or his attorney of record, which notice shall state the names and addresses of witnesses whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provisions in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If after notice and hearing, the court grants the motion, it shall instruct the consular officer thus disqualified to send the commission to any other consular officer of the United States named by the court, and such other officer shall execute the commission according to its terms and shall for all purposes be deemed the officer to whom the commission is addressed.

(c) The provisions of this section and sections 3493-3496 of this title applicable to consular officers shall be applicable to diplomatic officers pursuant to such regulations as may be prescribed by the President.

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 53, 63 Stat. 96; Dec. 12, 1975, Pub. L. 94-149, § 4, 89 Stat. 806.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695b of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 3, 49 Stat. 1562).

1949 ACT

This section [section 53] corrects section 3492(a) of title 18, U.S.C., so that the reference in the first sentence thereof will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a), are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-149 substituted "the authentication requirements of the Federal Rules of Evidence" for "the requirements of section 1732 of title 28".

1949—Subsec. (a). Act May 24, 1949, substituted "section 1732" for "section 695".

CROSS REFERENCES

Admissibility of foreign document, see section 3491 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record, see rule 27, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3491, 3493, 3494, 3495, 3496 of this title.

§ 3493. Deposition to authenticate foreign documents

The consular officer to whom any commission authorized under section 3492 of this title is addressed shall take testimony in accordance with its terms. Every person whose testimony is taken shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing or typewriting by the consular officer taking the testimony, or by some person under his personal supervision, or by the witness himself, in the presence of the consular officer and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the witness. Every foreign document, with respect to which testimony is taken, shall be annexed to such testimony and subscribed by each witness who appears for the purpose of establishing the genuineness of such document. When counsel for all the parties attend the examination of any witness whose testimony is to be taken on written interrogatories, they may consent that oral interrogatories in addition to those accompanying the commission may be put to the witness. The consular officer taking any testimony shall require an interpreter to be present when his services are needed or are requested by any party or his attorney.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695c of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 4, 49 Stat. 1563).

CROSS REFERENCES

Commission to consular officers to authenticate foreign documents, see section 3492 of this title.

Fees for witnesses and interpreters, see section 3495 of this title.

Regulations as to commissions and fees of witnesses, etc., see section 3496 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3492, 3495, 3496 of this title.

§ 3494. Certification of genuineness of foreign document

If the consular officer executing any commission authorized under section 3492 of this title shall be satisfied, upon all the testimony taken, that a foreign document is genuine, he shall certify such document to be genuine under the seal of his office. Such certification shall include a statement that he is not subject to disqualification under the provisions of section 3492 of this title. He shall thereupon transmit, by mail, such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the clerk of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the Government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695d of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 5, 49 Stat. 1563).

CROSS REFERENCES

Fees for witnesses and interpreters, see section 3495 of this title.

Regulations as to commissions and fees of witnesses, etc., see section 3496 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3491, 3492, 3495, 3496 of this title.

§ 3495. Fees and expenses of consuls, counsel, interpreters and witnesses

(a) The consular fees prescribed under section 1201 of Title 22, for official services in connection with the taking of testimony under sections 3492-3494 of this title, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under section 3493 of this title shall be entitled to receive, for each day's attendance, fees prescribed under section 3496 of this title. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under section 3493 of this title, shall be paid by the United States, such compensation, together with such personal and incidental expense upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

(b) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this section, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.

(c) Any appropriation available for the payment of fees and costs in the case of witnesses subpenaed in behalf of the United States in criminal cases shall be available for any fees or costs which the United States is required to pay under this section.

(June 25, 1948, ch. 645, 62 Stat. 836; May 24, 1949, ch. 139, § 54, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695f of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 7, 49 Stat. 1564).

1949 ACT

This section [section 54] corrects the reference in the first sentence of section 3495(a) of title 18, U.S.C., because the provisions which were formerly set out as section 127 of title 22, U.S.C., are now set out as section 1201 of such title.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, substituted "section 1201" for "section 127".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3492, 3496 of this title.

§ 3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters

The President is authorized to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492-3494 of this title and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of this title.

(June 25, 1948, ch. 645, 62 Stat. 836.)

HISTORICAL AND REVISION NOTES

Based on section 695g of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 8, 49 Stat. 1564).

EX. ORD. NO. 10307. DELEGATION OF AUTHORITY

Ex. Ord. No. 10307, Nov. 23, 1951, 16 F.R. 11907, provided:

By virtue of the authority vested in me by the act of August 8, 1950, 64 Stat. 419 (3 U.S.C. Supp. 301-303), I hereby delegate to the Secretary of State (1) the authority vested in the President by section 3496 of title 18 of the United States Code (62 Stat. 836) to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492-3494 of the said title, and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of the said title, and (2) the authority vested in the President by section 3492(c) of title 18 of the United States Code (62 Stat. 835) to prescribe regulations making the provisions of sections 3492-3496 of the said title applicable to diplomatic officers.

Executive Order No. 8298 of December 4, 1939, entitled "Regulations Governing the Manner of Executing and Returning Commissions by Officers of the Foreign Service in Criminal Cases, and Schedule of Fees and Compensation in Such Cases", is hereby revoked.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3492, 3495 of this title.

§ 3497. Account as evidence of embezzlement

Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the General Accounting Office.

(June 25, 1948, ch. 645, 62 Stat. 836.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 179, 355; section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (R.S. § 887; Mar. 4, 1909, ch. 321, §§ 93, 225, 35 Stat. 1105, 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section is a consolidation of section 179 of title 18, U.S.C., 1940 ed., with similar provisions of section 355 of title 18, U.S.C., 1940 ed., and section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, with changes of phraseology only except that "General Accounting Office" was substituted for "Treasury Department".

Other provisions of said section 355 of title 18, U.S.C., 1940 ed., are incorporated in section 1711 of this title.

Words in second sentence of said section 355 of title 18, U.S.C., 1940 ed., which preceded the semicolon therein and which read "Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement" were omitted as surplusage, because such failure to produce or to pay over such money or property constitutes embezzlement. (See sections 653 and 1711 of this title.)

CROSS REFERENCES

Accounting generally for public money, see section 643 of this title.

Admissibility of Government records and papers, see section 1733 of Title 28, Judiciary and Judicial Procedure.

Certified transcripts of General Accounting Office admissible in evidence, see section 46 of Title 31, Money and Finance.

Embezzlement of public money, see section 641 of this title.

Refusal to pay as evidence of embezzlement, see section 3487 of this title.

§ 3498. Depositions—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Time, manner and conditions of taking depositions; costs; notice; use; objections; written interrogatories, Rule 15.

Subpoenas on taking depositions, Rule 17(f).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3499. Contempt of court by witness—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disobedience of subpoena without excuse as contempt, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3500. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the

testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

(Added Pub. L. 85-269, Sept. 2, 1957, 71 Stat. 595, and amended Pub. L. 91-452, title I, § 102, Oct. 15, 1970, 84 Stat. 926.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-452, § 102(a), struck out "to an agent of the Government" following "(other than the defendant)".

Subsec. (d). Pub. L. 91-452, § 102(b), substituted "subsection" for "paragraph".

Subsec. (e). Pub. L. 91-452, § 102(c), (d), in par. (1), struck out "or" following "by him;", in par. (2), struck out "to an agent of the Government" following "said witness", and added par. (3).

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 26 section 6103.

§ 3501. Admissibility of confessions

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such persons before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided,* That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the

nearest available such magistrate or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

(Added Pub. L. 90-351, title II, § 701(a), June 19, 1968, 82 Stat. 210, and amended Pub. L. 90-578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115.)

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-578 substituted "magistrate" for "commissioner" in three instances.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 23-562 of the District of Columbia Code.

§ 3502. Admissibility in evidence of eye witness testimony

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

(Added Pub. L. 90-351, title II, § 701(a), June 19, 1968, 82 Stat. 211.)

§ 3503. Depositions to preserve testimony

(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

(b) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination, but his failure, absent good cause shown, to appear after notice and tender of expenses shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) If a defendant is without counsel, the court shall advise him of his rights and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel of his own choice. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at the instance of a defendant who appears to be unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and his attorney for attendance at the examination shall be paid by the Government. In such event the marshal shall make payment accordingly.

(d) A deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver of any objection to the taking and use of the deposition based upon its being so taken.

(e) The Government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the Government and which the Government would be required to make available to the defendant if the witness were testifying at the trial.

(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(g) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(Added Pub. L. 91-452, title VI, § 601(a), Oct. 15, 1970, 84 Stat. 934.)

§ 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1967, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissiblity; and

(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

(b) As used in this section "unlawful act" means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

(Added Pub. L. 91-452, title VII, § 702(a), Oct. 15, 1970, 84 Stat. 935.)

CONGRESSIONAL STATEMENT OF FINDINGS

Section 701 of Pub. L. 91-452 provided that: "The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act."

APPLICABILITY TO PROCEEDINGS

Section 703 of Pub. L. 91-452 provided that: "This title [enacting this section and provisions set as notes under this section] shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment [Oct. 15, 1970]. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment."

CHAPTER 225—VERDICT

Sec.
3531. Return; several defendants; conviction of less offense; poll of jury—Rule.
3532. Setting aside verdict of guilty; judgment notwithstanding verdict—Rule.

§ 3531. Return; several defendants; conviction of less offense; poll of jury—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Verdict to be unanimous; return; several defendants; disagreement; conviction of less offense; poll of jury, Rule 31.

(June 25, 1948, ch. 645, 62 Stat. 837.)

§ 3532. Setting aside verdict of guilty; judgment notwithstanding verdict—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Setting aside verdict of guilty on motion for judgment of acquittal, entering of such judgment, or ordering new trial; absence of verdict, Rule 29(b).

(June 25, 1948, ch. 645, 62 Stat. 837.)

CHAPTER 227—SENTENCE, JUDGMENT, AND EXECUTION

Sec.
3561. Judgment form and entry—Rule.
3562. Sentence—Rule.
3563. Corruption of blood or forfeiture of estate.
3564. Pillory and whipping.
3565. Collection and payment of fines and penalties.
3566. Execution of death sentence.
3567. Death sentence may prescribe dissection.
3568. Effective date of sentence; credit for time in custody prior to imposition of sentence.
3569. Discharge of indigent prisoner.
3570. Presidential remission as affecting unremitted part.
3571. Clerical mistakes—Rule.
3572. Correction or reduction of sentence—Rule.
3573. Arrest or setting aside of judgment—Rule.
3574. Stay of execution; supersedeas—Rule.
3575. Increased sentence for dangerous special offenders.
3576. Review of sentence.
3577. Use of information for sentencing.
3578. Conviction records.

AMENDMENTS

1970—Pub. L. 91-452, title X, § 1001(b), Oct. 15, 1970, 84 Stat. 952, added items 3575 to 3578.

1960—Pub. L. 86-691, § 1(b), Sept. 2, 1960, 74 Stat. 738, included credit for time in custody prior to imposition of sentence in item 3568.

CROSS REFERENCES

Remedies on motion attacking sentence while in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

§ 3561. Judgment form and entry—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Judgment to be signed by judge and entered by clerk, Rule 32(b).

(June 25, 1948, ch. 645, 62 Stat. 837.)

§ 3562. Sentence—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Imposition of sentence; commitment; bail; presentence investigation and report, Rule 32(a, c).

(June 25, 1948, ch. 645, 62 Stat. 837.)

§ 3563. Corruption of blood or forfeiture of estate

No conviction or judgment shall work corruption of blood or any forfeiture of estate.

(June 25, 1948, ch. 645, 62 Stat. 837.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940, ed., § 544 (Mar. 4, 1909, ch. 321, § 324, 35 Stat. 1151).

§ 3564. Pillory and whipping

The punishment of whipping and of standing in the pillory shall not be inflicted.

(June 25, 1948, ch. 645, 62 Stat. 837.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 545 (Mar. 4, 1909, ch. 321, § 325, 35 Stat. 1151).

§ 3565. Collection and payment of fines and penalties

In all criminal cases in which judgment or sentence is rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, such judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases. Where the judgment directs imprisonment until the fine or penalty imposed is paid, the issue of execution on the judgment shall not discharge the defendant from imprisonment until the amount of the judgment is paid.

(June 25, 1948, ch. 645, 62 Stat. 837.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 569 (R.S. § 1041). Minor changes were made in phraseology.

CROSS REFERENCES

Discharge of indigent prisoner, see section 3569 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Bond for payment of fine pending appeal, see rule 38, Appendix to this title.

Depositing the whole or part of fine pending appeal, see rule 38.

Examination of assets pending appeal, see rule 38.

Order restraining dissipation of assets pending appeal, see rule 38.

Stay of fine, see rule 38.

§ 3566. Execution of death sentence

The manner of inflicting the punishment of death shall be that prescribed by the laws of the place within which the sentence is imposed. The United States marshal charged with the execution of the sentence may use available local facilities and the services of an appropriate local official or employ some other person for such purpose, and pay the cost thereof in an amount approved by the Attorney General. If the laws of the place within which sentence is imposed make no provision for the infliction of the penalty of death, then the court shall designate some other place in which such sentence shall be executed in the manner prescribed by the laws thereof.

(June 25, 1948, ch. 645, 62 Stat. 837.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 542 (Mar. 4, 1909, ch. 321, § 323, 35 Stat. 1151, June 19, 1937, ch. 367, 50 Stat. 304).

Word "place" was substituted for "State" in three places, so as to make it clear that this section applies to a district, possession or territory, as well as to a state. In a recent Hawaiian case in which the death penalty was imposed, this section was the only authority for the execution in the manner prescribed by Hawaiian law.

Minor changes were made in phraseology.

CROSS REFERENCES

Addition to the judgment of death that the body of the offender be delivered to a surgeon for dissection, see section 3567 of this title.

§ 3567. Death sentence may prescribe dissection

The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution.

(June 25, 1948, ch. 645, 62 Stat. 838.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 543 (Mar. 4, 1909, ch. 321, § 331, 35 Stat. 1152).

CROSS REFERENCES

Rescue of body of executed offender as offense, see section 754 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 754 of this title.

§ 3568. Effective date of sentence; credit for time in custody prior to the imposition of sentence

The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention.

No sentence shall prescribe any other method of computing the term.

(June 25, 1948, ch. 645, 62 Stat. 838; Sept. 2, 1960, Pub. L. 86-691, § 1(a), 74 Stat. 738; June 22, 1966, Pub. L. 89-465, § 4, 80 Stat. 217.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 709a (June 29, 1932, ch. 310, § 1, 47 Stat. 381).

Minor change in phraseology was made.

AMENDMENTS

1966—Pub. L. 89-465 deleted the proviso which required the Attorney General to give any such person credit toward service of his sentence for any days spent in custody prior to the imposition of sentence by the sentencing court for want of bail set for the offense under which sentence was imposed where the statute requires the imposition of a minimum mandatory sentence, and added the provisions requiring the Attorney General to give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed and defining the term "offense".

1960—Pub. L. 86-691 included credit for time in custody prior to the imposition of sentence in the catchline, and inserted proviso requiring the Attorney General to give any such person credit toward service of his sentence for any days spent in custody prior to the imposition of sentence by the sentencing court for want of bail set for the offense under which sentence was imposed where the statute requires the imposition of a minimum mandatory sentence.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-465 effective ninety days after June 22, 1966 and applicable only to sentences imposed on or after the effective date, see section 6 of Pub. L. 89-465, set out as an Effective Date note under section 3146 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86-691 provided that: "The amendments made by the first section of this Act [amending this section and the analysis preceding section 3561 of this title] shall be effective only with respect to persons sentenced to imprisonment on or after the thirtieth day after the date of enactment of this Act [Sept. 2, 1960]."

FEDERAL RULES OF CRIMINAL PROCEDURE

Correction or reduction of sentence, see rule 35, Appendix to this title.

Election to commence service of sentence of imprisonment, see rule 38

Sentence and judgment, see rule 32.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Form of judgment and commitment, see form 25, Appendix to this title.

§ 3569. Discharge of indigent prisoner

(a) When a poor convict, sentenced for violation of any law of the United States by any court established by enactment of Congress, to be imprisoned and pay a fine, or fine and costs, or to pay a fine, or fine and costs, has been confined in prison thirty days, solely for the nonpayment of such fine, or fine and costs, such convict may make application in writing to the nearest United States magistrate in the district where he is imprisoned setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the magistrate shall proceed to hear and determine the matter.

If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding $20 in value, except such as is by law exempt from being taken on execution for debt, the magistrate shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, exceeding $20, except such as is by law exempt from being taken on civil process for debt; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath such convict shall be discharged; and the magistrate shall file with the institution in which the convict is confined, a certificate setting forth the facts. In case the convict is found by the magistrate to possess property valued at an amount in excess of said exemption, nevertheless, if the Attorney General finds that the retention by such convict of all of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine, or fine and costs; or if he finds that the retention by such convict of any part of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine or fine and costs upon payment on account of his fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family.

(b) Any such indigent prisoner in a Federal institution may, in the first instance, make his application to the warden of such institution, who shall have all the powers of a United States magistrate in such matters, and upon proper showing in support of the application shall administer the oath required by subsection (a) of this section, discharge the prisoner, and file his certificate to that effect in the records of the institution.

Any such indigent prisoner, to whom the warden shall fail or refuse to administer the oath may apply to the nearest magistrate for the relief authorized by this section and the magistrate shall proceed de novo to hear and determine the matter.

(June 25, 1948, ch. 645, 62 Stat. 838; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(1), (3), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 641 (R.S. §§ 1042, 5296; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; May 24, 1935, ch. 142, 49 Stat. 289; June 29, 1940, ch. 449, § 4, 54 Stat. 692; July 10, 1946, ch. 547, 60 Stat. 524, 525).

Words "for violation of any law of the United States by any court established by enactment of Congress," were substituted at beginning of section for "by any court of the United States", to make clear that this section extends to the territories and possessions as well as within the continental United States and the District of Columbia. The act of June 29, 1940, ch. 449, § 4, 54 Stat. 692 amending R.S. § 5296, inadvertently omitted the provision of the act of May 24, 1935, ch. 142, 49 Stat. 289, which extended the application of the section to Alaska. The revised section repairs this omission and gives legislative sanction to an administrative construction which has continued the application of the statute to cases arising in Alaska.

The words in parentheses naming the State where oath is administered were deleted as unnecessary and misleading since the law of the place where the property has its situs is controlling as to exemptions.

Minor changes of phraseology were also made.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-578 substituted "United States magistrate" for "United States commissioner" in the first par. and "magistrate" for "commissioner," once in the first par. and three times in the second par., respectively.

Subsec. (b). Pub. L. 90-578 substituted "United States magistrate" for "United States commissioner" in the first par. and "magistrate" for "commissioner" twice in the second par., respectively.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Collection of fines and penalties, see section 3565 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 16-706 of the District of Columbia Code.

§ 3570. Presidential remission as affecting unremitted part

Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President's remission in whole or in part of either kind shall not impair the legal validity of the other kind, or of any portion of either kind, not remitted.

(June 25, 1948, ch. 645, 62 Stat. 839.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 568, 723 (Mar. 4, 1909, ch. 321, § 327, 35 Stat. 1151; June 25, 1910, ch. 387, § 10, 36 Stat. 821).

Words "pardon or" before "remit" and "pardoned or" before "remitted", were omitted as unnecessary in view of the pardoning power of the President under Const. Art. 2, § 2, cl. 1. "The power of the President is not subject to legislative control." Ex parte Gerland, 1866, 4 Wall. 380. (See also notes of decisions, note 5, U.S.C.A. Const. Art. 2, § 2, cl. 1.)

CROSS REFERENCES

Commutation of sentence—
Good conduct, see section 4161 of this title.
Industrial good time, see section 4162 of this title.
Pardon of certain crimes precluding deportation of aliens, see section 1251 of Title 8, Aliens and Nationality.
Presidential reprieves and pardons, see Const. Art. 2, § 2, cl. 1.

§ 3571. Clerical mistakes—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Court empowered to correct clerical mistakes in judgments, orders, or record, Rule 36.

(June 25, 1948, ch. 645, 62 Stat. 839.)

CROSS REFERENCES

Remedies on motion attacking sentence while in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

§ 3572. Correction or reduction of sentence—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Court empowered to correct or reduce sentence; time; Rule 35.

(June 25, 1948, ch. 645, 62 Stat. 839.)

CROSS REFERENCES

Remedies on motion attacking sentence while in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

§ 3573. Arrest or setting aside of judgment—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Arrest of judgment, grounds and motion, time, Rule 34.

Setting aside judgment and permitting withdrawal of plea of guilty, Rule 32(d).

(June 25, 1948, ch. 645, 62 Stat. 839.)

§ 3574. Stay of execution; supersedeas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Death or imprisonment sentence, fines stayed on appeal; conditions and power of court, Rule 38(a).

(June 25, 1948, ch. 645, 62 Stat. 839.)

§ 3575. Increased sentence for dangerous special offenders

(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held before sentence is imposed, by the court sitting without a jury. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented

by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

(c) This section shall not prevent the imposition and execution of a sentence of death or of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special offender to less than any mandatory minimum penalty prescribed by law for such felony. This section shall not be construed as creating any mandatory minimum penalty.

(e) A defendant is a special offender for purposes of this section if—

(1) the defendant has previously been convicted in courts of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for two or more offenses committed on occasions different from one another and from such felony and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense punishable by death or imprisonment in excess of one year under applicable laws of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof; or

(2) the defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For purposes of paragraph (2) of this subsection, special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits or proceeds of such conduct. For purposes of paragraphs (2) and (3) of this subsection, criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristic and are not isolated events.

(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felony is required for the protection of the public from further criminal conduct by the defendant.

(g) The time for taking an appeal from a conviction for which sentence is imposed after pro-

ceedings under this section shall be measured from imposition of the original sentence.

(Added Pub. L. 91-452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 948.)

REFERENCES IN TEXT

Section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), referred to in subsec. (e), is classified to section 206(a)(1) of Title 29, Labor.

Section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), referred to in subsec. (e), is classified to section 62 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3576 of this title.

§ 3576. Review of sentence

With respect to the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

(Added Pub. L. 91-452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3148 of this title.

§ 3577. Use of information for sentencing

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

(Added Pub. L. 91-452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951.)

§ 3578. Conviction records

(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

(b) Upon the conviction thereafter of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

(c) Records maintained in the repository shall not be public records. Certified copies thereof—

(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(2) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of a State, any political subdivision, or any department, agency, or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

(3) shall be prima facie evidence in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section.

(Added Pub. L. 91-452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951.)

CHAPTER 229—FINES, PENALTIES AND FORFEITURES

Sec.
3611. Firearms possessed by convicted felons.
3612. Bribe moneys.
3613. Fines for setting grass and timber fires.
3614. Fine for seduction.
3615. Liquors and related property; definitions.
[3616. Repealed.]
3617. Remission or mitigation of forfeitures under liquor laws; possession pending trial.
3618. Conveyances carrying liquor.
3619. Disposition of conveyances seized for violation of the Indian liquor laws.
3620. Vessels carrying explosives and steerage passengers.

Amendments

1970—Pub. L. 91-513, title III, § 1101(b)(2)(B), Oct. 27, 1970, 84 Stat. 1292, struck out item "3616. Use of confiscated motor vehicles".

1954—Act Sept. 3, 1954, ch. 1263, § 35, 68 Stat. 1240, added item 3620.

1951—Act Oct. 24, 1951, ch. 546, § 1, 65 Stat. 609, added item 3619.

§ 3611. Firearms possessed by convicted felons

A judgment of conviction for transporting a stolen motor vehicle in interstate or foreign commerce or for committing or attempting to commit a felony in violation of any law of the United States involving the use of threats, force, or violence or perpetrated in whole or in part by the use of firearms, may, in addition to the penalty provided by law for such offense, order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of the defendant at the time of his arrest.

The court may direct the delivery of such firearms or ammunition to the law-enforcement agency which apprehended such person, for its use or for any other disposition in its discretion.

(June 25, 1948, ch. 645, 62 Stat. 839.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 645 (June 13, 1939, ch. 197, 53 Stat. 814).

The condensation and simplification of this section clarifies its intent to confiscate the firearms taken from persons convicted of crimes of violence without any real change of substance.

§ 3612. Bribe moneys

Moneys received or tendered in evidence in any United States Court, or before any officer thereof, which have been paid to or received by any official as a bribe, shall, after the final disposition of the case, proceeding or investigation, be deposited in the registry of the court to be disposed of in accordance with the order of the court, to be subject, however, to the provisions of section 2042 of Title 28.

(June 25, 1948, ch. 645, 62 Stat. 840; May 24, 1949, ch. 139, § 55, 63 Stat. 96.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., § 570 (Jan. 7, 1925, ch. 33, 43 Stat. 726).

Changes were made in phraseology.

1949 Act

This section [section 55] corrects section 3612 of title 18, U.S.C., so that the reference in such section will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

Amendments

1949—Act May 24, 1949, substituted "section 2042" for "section 852".

Cross References

Appropriation account for return of unclaimed money deposited by clerks of courts to be covered into trust fund receipt account of Treasury, see section 725p of Title 31, Money and Finance.

Withdrawal of money deposited in court, see section 2042 of Title 28, Judiciary and Judicial Procedure.

§ 3613. Fines for setting grass and timber fires

In all cases arising under sections 1855 and 1856 of this title the fines collected shall be paid into the public-school fund of the county in which the lands where the offense was committed are situated.

(June 25, 1948, ch. 645, 62 Stat. 840.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 108 (Mar. 4, 1909, ch. 321, § 54, 35 Stat. 1099).

Cross References

Fires left unattended and unextinguished, see section 1856 of this title.

Timber set afire, see section 1855 of this title.

§ 3614. Fine for seduction

When a person is convicted of a violation of section 2198 of this title and fined, the court may direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any.

(June 25, 1948, ch. 645, 62 Stat. 840.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 460 (Mar. 4, 1909, ch. 321, § 281, 35 Stat. 1144).

Other provisions of said section 460 of title 18, U.S.C., 1940 ed., were incorporated in sections 2198 and 3286 of this title.

§ 3615. Liquors and related property; definitions

All liquor involved in any violation of sections 1261-1265 of this title, the containers of such liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited and such property or its proceeds dis-

posed of in accordance with the laws relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws.

As used in this section, "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; "vehicle" includes animals and every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air.

(June 25, 1948, ch. 645, 62 Stat. 840.)

HISTORICAL AND REVISION NOTES

Based on sections 222 and 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 2, 4, 49 Stat. 1928).

Section consolidates sections 222 and 224 of title 27, U.S.C., 1940 ed., with changes in phraseology and arrangement necessary to effect the consolidation. Said section 222 is also incorporated in section 1262 of this title.

Definition of "State" in section 222 of title 27 U.S.C., 1940 ed., as meaning and including "every State, Territory, and Possession of the United States," was omitted because the words "Territory, District," and so forth, appear after "State" in sections 1262, 1265, of this title, which are the only sections in chapter 59, constituting sections 1261-1265 of this title, to which such definition would have been applicable.

Changes made in phraseology.

REFERENCES IN TEXT

The internal-revenue laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

CROSS REFERENCES

Liquor traffic, offenses relating to, see section 1261 et seq. of this title.

[§ 3616. Repealed. Pub. L. 91-513, title III, § 1101(b)(2)(A), Oct. 27, 1970, 84 Stat. 1292]

Section, act June 25, 1948, ch. 645, 62 Stat. 840, authorized the use of confiscated vehicles by narcotics agents and the payment of the costs of acquisition, maintenance, repair, and operation thereof.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of this section by section 1101 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a Savings Provision note under section 171 of Title 21, Foods and Drugs.

§ 3617. Remission or mitigation of forfeitures under liquor laws; possession pending trial

(a) Jurisdiction of court

Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) Conditions precedent to remission or mitigation

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at not time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(c) Claimants first entitled to delivery

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in the order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in sections 304f-304m of Title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

(d) Delivery on bond pending trial

In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for

the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession.

(June 25, 1948, ch. 645, 62 Stat. 840.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 646 (Aug. 27, 1935, ch. 740, § 204, 49 Stat. 878).

A minor change was made in phraseology.

REFERENCES IN TEXT

The internal-revenue laws relating to liquor, referred to in subsecs. (a) and (d), are classified generally to chapter 51 (§ 5001 et seq.) of Title 26, Internal Revenue Code.

CROSS REFERENCES

Disposition of seized conveyances, see section 3619 of this title.

Remission of vehicles forfeited under customs or navigation laws, see section 1613 of Title 19, Customs Duties.

Remission or mitigation of forfeiture—

Distilled spirits, wines, or malt beverages, see section 5688 of Title 26, Internal Revenue Code.

Under internal revenue laws generally, see section 7327 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1161, 3619 of this title.

§ 3618. Conveyances carrying liquor

Any conveyance, whether used by the owner or another in introducing or attempting to introduce intoxicants into the Indian country, or into other places where the introduction is prohibited by treaty or enactment of Congress, shall be subject to seizure, libel, and forfeiture.

(June 25, 1948, ch. 645, 62 Stat. 841.)

HISTORICAL AND REVISION NOTES

Based on section 247 of title 25, U.S.C., 1940 ed., Indians (Mar. 2, 1917, ch. 146, § 1, 39 Stat. 970).

Words "Automobiles or any other vehicles or" at beginning of section were omitted, and "any conveyance" substituted to remove possible ambiguity as to scope of section.

Words at conclusion of section "provided in section 246 of this title" added nothing and were therefore omitted. (See also rule 41 of the Federal Rules of Criminal Procedure.)

Minor changes were made in arrangement and phraseology.

CROSS REFERENCES

Application of Indian liquor laws, see section 1161 of this title.

Disposition of seized conveyances, see section 3619 of this title.

Indian country defined, see section 1151 of this title.

Introducing intoxicating liquors into Indian country, see section 1154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1161, 3619 of this title.

§ 3619. Disposition of conveyances seized for violation of the Indian liquor laws

The provisions of section 3617 of this title shall apply to any conveyances seized, proceeded against by libel, or forfeited under the provisions of section 3113 or 3618 of this title for having been used in introducing or attempting to introduce intoxicants into the Indian country or into other places where such introduction is prohibited by treaty or enactment of Congress.

(Added Oct. 24, 1951, ch. 546, § 2, 65 Stat. 609.)

§ 3620. Vessels carrying explosives and steerage passengers

The amount of any fine imposed upon the master of a steamship or other vessel under the provisions of section 2278 of this title shall be a lien upon such vessel, and such vessel may be libeled therefor in the district court of the United States for any district in which such vessel shall arrive or from which it shall depart.

(Added Sept. 3, 1954, ch. 1263, § 36, 68 Stat. 1239.)

CHAPTER 231—PROBATION

Sec.
3651. Suspension of sentence and probation.
3652. Probation—Rule.
3653. Report of probation officer and arrest of probationer.
3654. Appointment and removal of probation officers.
3655. Duties of probation officers.
3656. Duties of Director of Administrative Office of the United States Courts.

CROSS REFERENCES

Federal Youth Corrections Act, relationship to this chapter, see section 5023 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5023 of this title.

§ 3651. Suspension of sentence and probation

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied that the ends of justice and the best interest of the

public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

The court may revoke or modify any condition of probation, or may change the period of probation.

The period of probation, together with any extension thereof, shall not exceed five years.

While on probation and among the conditions thereof, the defendant—

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and

May be required to provide for the support of any persons, for whose support he is legally responsible.

The court may require a person as conditions of probation to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of probation: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.

A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

The court may require a person who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of probation, to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of probation: *Provided*, That the Attorney General certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.

The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.

(June 25, 1948, ch. 645, 62 Stat. 842; June 20, 1958, Pub. L. 85-463, § 1, 72 Stat. 216; Aug. 23, 1958, Pub. L. 85-741, 72 Stat. 834; Oct. 22, 1970, Pub. L. 91-492, § 1, 84 Stat. 1090; May 11, 1972, Pub. L. 92-293, § 1, 86 Stat. 136.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 724 (Mar. 4, 1925, ch. 521, § 1, 43 Stat. 1259).

The phrase "any court having jurisdiction to try offenses against the United States" was substituted for "the courts of the United States" with the approval of the Department of Justice and the Director of the Administrative Office of the United States Courts in order to make clear the legislative intent of Congress that the probation system is available for the rehabilitation of Federal offenders in the Territories and Possessions as well as in the continental United States.

Words "after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment" were omitted from first sentence as unnecessary.

Words "or the court may impose or fine and may also place the defendant upon probation in the manner aforesaid." were also omitted from the first sentence. The second paragraph of this revised section was substituted to clarify and define accurately the limitation upon suspension of fine or imprisonment, and probation. It reflects exactly the practice followed by Federal courts.

The third and fourth paragraphs of the revised section incorporate the last two sentences from the original first paragraph.

The fifth paragraph of the revised section incorporates the last paragraph of the original section. Words "and as a condition thereof" were inserted after "While on probation". Words "imposed at the time of being placed on probation" were omitted as surplusage.

The last paragraph of the revised section is new. It insures certainty as to extent of defendant's liability upon fulfilling conditions of probation and is also consistent with the words inserted at the beginning of the fifth paragraph.

Minor changes in arrangement and phraseology were made.

References in Text

Section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), referred to in text, is section 201(q) of Title 42, The Public Health and Welfare.

Amendments

1972—Pub. L. 92-293 added paragraph permitting court to require an addict or a drug dependent person to participate in the community supervision programs as a condition of probation if the Attorney General certifies to the availability of such a program, and authorized Attorney General to determine effectiveness of treatment of probationer and probationer's effect on other participants and, if effect is adverse, to notify the court so it can make such other provision for the probationer as it deems appropriate.

1970—Pub. L. 91-492 added provision permitting court to require residential treatment as a condition of probation if the Attorney General certifies that adequate facilities are available, authorized Attorney General to determine effectiveness of treatment for

probationer and probationer's effect on other participants in treatment and if effect is adverse to notify the court so it can make such other provision for the probationer as it deems appropriate, and authorized payment by the probationer of such costs incident to residence as the Attorney General deems appropriate.

1958—Pub. L. 85-741 added second par., relating to confinement for not more than six months in connection with the grant of probation.

Pub. L. 85-463 eliminated provisions from the first paragraph which excepted courts in the District of Columbia.

FUNDS COLLECTED PURSUANT TO RESIDENCE AT TREATMENT CENTERS

Section 3 of Pub. L. 91-492 provided that: "Funds collected pursuant to section 3651 and section 4203 of title 18, as amended [this section and section 4203 of this title], shall be deposited in the Treasury of the United States as miscellaneous receipts."

APPLICABILITY TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Section 1 of Pub. L. 85-463 provided in part that the provisions of this section shall apply to the United States District Court for the District of Columbia.

CROSS REFERENCES

Expense of transportation to place designated under terms of probation, see section 4283 of this title.

Fixing eligibility for parole at time of sentencing, see section 4208 of this title.

Juvenile delinquents, probation of, see section 5034 of this title.

Narcotic addict, probation conditioned on treatment, see section 259 of Title 42, The Public Health and Welfare.

Probation of juvenile delinquents, see section 5034 of this title.

Transportation and subsistence expense to place designated under terms of probation, see section 4283 of this title.

United States Magistrates, application of probation laws to persons tried by Magistrates, see section 3401 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Presentence investigation before granting probation, see rule 32, Appendix to this title.

Probation, see rule 32.

Stay of order of probation pending appeal, see rule 38.

Suspension of sentence, motion to withdraw plea of guilty or nolo contendere, see rule 32.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3653, 4205 of this title.

§ 3652. Probation—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Probation as provided by law, Rule 32(e).
Presentence investigation, Rule 32(c).

(June 25, 1948, ch. 645, 62 Stat. 842.)

§ 3653. Report of probation officer and arrest of probationer

When directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereupon discharge the probationer from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable.

Whenever during the period of his probation, a probationer heretofore or hereafter placed on probation, goes from the district in which he is being supervised to another district, jurisdiction over him may be transferred, in the discretion of the court, from the court for the district from which he goes to the court for the other district, with the concurrence of the latter court. Thereupon the court for the district to which jurisdiction is transferred shall have all power with respect to the probationer that was previously possessed by the court for the district from which the transfer is made, except that the period of probation shall not be changed without the consent of the sentencing court. This process under the same conditions may be repeated whenever during the period of his probation the probationer goes from the district in which he is being supervised to another district.

At any time within the probation period, the probation officer may for cause arrest the probationer wherever found, without a warrant. At any time within the probation period, or within the maximum probation period permitted by section 3651 of this title, the court for the district in which the probationer is being supervised or if he is no longer under supervision, the court for the district in which he was last under supervision, may issue a warrant for his arrest for violation of probation occurring during the probation period. Such warrant may be executed in any district by the probation officer or the United States marshal of the district in which the warrant was issued or of any district in which the probationer is found. If the probationer shall be arrested in any district other than that in which he was last supervised, he shall be returned to the district in which the warrant was issued, unless jurisdiction over him is transferred as above provided to the district in which he is found, and in that case he shall be detained pending further proceedings in such district.

As speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him. Thereupon the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(June 25, 1948, ch. 645, 62 Stat. 842; May 24, 1949, ch. 139, § 56, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 725 (Mar. 4, 1925, ch. 521, § 2, 43 Stat. 1260; June 16, 1933, ch. 97, 48 Stat. 256).

The section was rewritten with considerable change of phraseology to remove ambiguity in the original enactment under which the serious question was presented whether probation might be revoked for misconduct occurring after the termination of the probation period.

The phrase "within the maximum period for which the defendant might originally have been sentenced" was deleted, and in place thereof was substituted the phrase "or at any time within five years after the expiration of the probation period, for violation of probation occurring during the probation period."

The section as revised removes the possibility that a probationer sentenced on a fifteen count mail fraud

indictment would be subject for seventy-five years to the liability of revocation of probation.

The suggestion was made that the word "probationer", wherever it appears, be changed to "defendant". In the revised section, however, the word "defendant" which appeared twice in said section 725 of title 18, U.S.C., 1940 ed., was omitted and the word "probationer" was substituted as the more accurately descriptive term.

The last sentence was substituted for "Thereupon the court may revoke the probation or the suspension of sentence, and may impose any sentence which might originally have been imposed." This clarifies the intent of the section in conformity with the opinion in Roberts v. United States (1943, 63 S. Ct. 113, 320 U.S. 264, 88 L. Ed. 41).

1949 Act

This section [section 56] incorporates in section 3653 of title 18, U.S.C., the provisions of act of June 25, 1948 (ch. 653, 62 Stat. 1016), which became law subsequent to the enactment of title 18. Changes in phraseology have been made.

Amendments

1949—Act May 24, 1949, amended section generally.

§ 3654. Appointment and removal of probation officers

Any court having original jurisdiction to try offenses against the United States may appoint one or more suitable persons to serve as probation officers within the jurisdiction and under the direction of the court making such appointment.

All such probation officers shall serve without compensation except that in case it shall appear to the court that the needs of the service require that there should be salaried probation officers, such court may appoint such officers.

Such court may in its discretion remove a probation officer serving in such court.

The appointment of a probation officer shall be in writing and shall be entered on the records of the court, and a copy of the order of appointment shall be delivered to the officer so appointed and a copy sent to the Director of the Administrative Office of the United States Courts.

Whenever such court shall have appointed more than one probation officer, one may be designated chief probation officer and shall direct the work of all probation officers serving in such court.

(June 25, 1948, ch. 645, 62 Stat. 843; Aug. 2, 1949, ch. 383, § 2, 63 Stat. 491.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 726 (Mar. 4, 1925, ch. 521, § 3, 43 Stat. 1260; June 6, 1930, ch. 406, § 1, 46 Stat. 503).

Several minor changes and changes necessary because of later enactments and other developments affecting text matter, were made.

The phrase "any court having original jurisdiction of offenses against the United States" was substituted for "any court of the United States having original jurisdiction of criminal actions" for clarity and to conform with section 3651 of this title. (See reviser's note to said section 3651).

Omitted were the words "The Attorney General shall fix the salaries to be paid probation officers and shall provide for the necessary expenses of probation officers, including clerical service, and expenses for traveling when approved by the court," because of the specific repeal of the 1940 Appropriation Act by section 2 of the act of August 7, 1939, ch. 501, 53 Stat. 1225, relating to Attorney General control and, more important, because Congress has specifically limited the salary of probation and chief probation officers in the annual Legislative and Judiciary Appropriation Acts, to wit, not less than $1,800 nor more than $3,600. per annum. (See, for example, Legislative and Judiciary Appropriation Act of 1943, act of June 28, 1943, ch. 173, title II, § 201, 57 Stat. 242.) The same is true with regard to transportation expenses, etc.; see, ibid., 1943 Appropriation Act. The scale of salaries is now fixed by the Director within the limits of the Appropriation Act. Also omitted from the section were the words "Attorney General" after "a copy sent to" and substituted "Director of the Administrative Office of the United States Courts" because under the authority of the creating act of August 7, 1939, 53 Stat. 1225, the Director established a Probation Service which exercises general supervision of accounts and practices of the Federal probation officers, subject to the primary control by the respective district courts which they serve. (See Annual Report of Director of the Administrative Office of the United States Courts, September 1943, pp. 17-20. See also Report of Director for 1941, pp. 33, 34.)

The word "court" was substituted in several places for "judge or judges" and "court or courts" without change of meaning.

Amendments

1949—Act Aug. 2, 1949, made section applicable to the United States District Court for the District of Columbia.

Effective Date of 1949 Amendment

Section 10 of act Aug. 2, 1949, provided that the amendment by section 2 of act Aug. 2, 1949, shall be effective as of July 1, 1949.

Cross References

Administrative Office of United States Courts, see section 601 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 3655. Duties of probation officers

The probation officer shall furnish to each probationer under his supervision a written statement of the conditions of probation and shall instruct him regarding the same.

He shall keep informed concerning the conduct and condition of each probationer under his supervision and shall report thereon to the court placing such person on probation.

He shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition.

He shall keep records of his work; shall keep accurate and complete accounts of all moneys collected from persons under his supervision; shall give receipts therefor, and shall make at least monthly returns thereof; shall make such reports to the Director of the Administrative Office of the United States Courts as he may at any time require; and shall perform such other duties as the court may direct.

Each probation officer shall perform such duties with respect to persons on parole as the United States Parole Commission shall request.

(June 25, 1948, ch. 645, 62 Stat. 843; Mar. 15, 1976, Pub. L. 94-233, § 14, 90 Stat. 233.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 727 (Mar. 4, 1925, ch. 521, § 4, 43 Stat. 1260; June 6, 1930, ch. 406, § 1, 46 Stat. 503).

A necessary substitution and omission of superseded text matter was made in this section. The first sentence of section 727 of title 18, U.S.C., 1940 ed., making it the duty of the probation officer to investigate and report concerning any case referred to him by the court was omitted as superseded by Rule 32(c)(1) of the Federal Rules of Criminal Procedure which require presentence investigation in every case unless the court otherwise directs.

The words "Director of the Administrative Office of the United States Courts" were substituted for "Attorney General" where it first appeared. In view of the fact that the Administrative Office now exercises general supervision of the accounts and practices, reports, etc., of probation officers since the enactment of act of August 7, 1939, the Attorney General's previous authority is therefore superseded. (See also reviser's note under section 3654 of this title.)

The reason why no similar substitution of language was made in the next to the last sentence where the words "Attorney General" are mentioned is due to the fact that uniformly since 1939, Congress in the annual legislative and judiciary appropriation acts stipulates that such probation officers shall be under a duty to observe the "official orders of the Attorney General with respect to the supervision and furnishing of information of any prisoner released conditionally on parole." The parole supervision is under the Attorney General while probation is under the Director of the Administrative Office.

Omitted the last sentence reading "A probation officer shall have the power of arrest that is now exercised by a deputy marshal." as superseded by section 3653 of this title.

Other changes of phraseology were made without change of substance.

AMENDMENTS

1976—Pub. L. 94-233 substituted "United States Parole Commission" for "Attorney General".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

CROSS REFERENCES

Administrative Office of United States Courts, see section 601 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 3656. Duties of Director of Administrative Office of the United States Courts

The Director of the Administrative Office of the United States Courts, or his authorized agent, shall investigate the work of the probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of all probation officers.

He shall collect for publication statistical and other information concerning the work of the probation officers.

He shall prescribe record forms and statistics to be kept by the probation officers and shall formulate general rules for the proper conduct of the probation work.

He shall endeavor by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws in all United States courts.

He shall, under the supervision and direction of the Judicial Conference of the United States, fix the salaries of probation officers and shall provide for their necessary expenses including clerical service and travel expenses.

He shall incorporate in his annual report a statement concerning the operation of the probation system in such courts.

(June 25, 1948, ch. 645, 62 Stat. 843; May 24, 1949, ch. 139, § 57, 63 Stat. 97.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 728 (Mar. 4, 1925, ch. 521, § 4(a), as added June 6, 1930, ch. 406, § 2, 46 Stat. 503).

The only change made in this section was the substitution of the "Director of the Administrative Office of the United States Courts" for "Attorney General". (See reviser's note under section 3654 of this title.)

1949 ACT

This amendment [see section 57] conforms the language of section 3656 of title 18, U.S.C., to that of title 28, U.S.C., section 604(a).

AMENDMENTS

1949—Act May 24, 1949, inserted in fifth par. of section "and direction" following "supervision".

INCREASE IN COMPENSATION RATES

Increase in compensation rates fixed under this section, see note under section 603 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Administrative Office of United States Courts, see section 601 et seq. of Title 28, Judiciary and Judicial Procedure.

CHAPTER 233—CONTEMPTS

Sec.
3691. Jury trial of criminal contempts.
3692. Jury trial for contempt in labor dispute cases.
3693. Summary disposition or jury trial; notice—Rule.

§ 3691. Jury trial of criminal contempts

Whenever a contempt charged shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States.

(June 25, 1948, ch. 645, 62 Stat. 844.)

HISTORICAL AND REVISION NOTES

Based on sections 386, 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§ 21, 24, 38 Stat. 738, 739).

The first paragraph of this section is completely rewritten from section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting everything covered and superseded by rules 23 and 42 of the Federal Rules of Criminal Procedure.

The second paragraph of this section is derived from section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting directions as to the trial of other contempts which are now covered by rule 42 of the Federal Rules of Criminal Procedure.

Minor changes were made in phraseology.

CROSS REFERENCES

Criminal contempts constituting offenses, see section 402 of this title.

Jury trial discretionary in cases of criminal contempt arising under civil rights laws, see section 1995 of Title 42, The Public Health and Welfare.

Limitations, see section 3285 of this title.

Power to punish for contempt generally, see section 401 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jury trial for criminal contempt where statutes so provide, see rule 42, Appendix to this title.

Statutory provisions defining criminal contempt, see Advisory Commitee Notes under rule 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 402 of this title.

§ 3692. Jury trial for contempt in labor dispute cases

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(June 25, 1948, ch. 645, 62 Stat. 844.)

HISTORICAL AND REVISION NOTES

Based on section 111 of Title 29, U.S.C., 1940 ed., Labor (Mar. 23, 1932, ch. 90, § 11, 47 Stat. 72).

The phrase "or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" was inserted and the reference to specific sections of the Norris-LaGuardia Act (sections 101-115 of Title 29, U.S.C., 1940 ed.) were eliminated.

TAFT-HARTLEY INJUNCTIONS

Former section 111 of Title 29, Labor, upon which this section is based, as inapplicable to injunctions issued under the Taft-Hartley Act, see section 178 of Title 29.

CROSS REFERENCES

Injunctions in labor disputes as provided for by Norris-LaGuardia Act, see section 101 et seq. of Title 29, Labor.

§ 3693. Summary disposition or jury trial; notice—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Summary punishment; certificate of judge; order; notice; jury trial; bail; disqualification of judge, Rule 42.

(June 25, 1948, ch. 645, 62 Stat. 844.)

CHAPTER 235—APPEAL

Sec.
3731. Appeal by United States.
3732. Taking of appeal; notice; time—Rule.
3733. Assignment of errors—Rule.
3734. Bill of exceptions abolished—Rule.
3735. Bail on appeal or certiorari—Rule.
3736. Certiorari—Rule.
3737. Record—Rule.
3738. Docketing appeal and record—Rule.
3739. Supervision—Rule.
3740. Argument—Rule.
3741. Harmless error and plain error—Rule.

§ 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

The provisions of this section shall be liberally construed to effectuate its purposes.

(June 25, 1948, ch. 645, 62 Stat. 844; May 24, 1949, ch. 139, § 58, 63 Stat. 97; June 19, 1968, Pub. L. 90-351, title VIII, § 1301, 82 Stat. 237; Jan. 2, 1971, Pub. L. 91-644, title III, § 14(a), 84 Stat. 1890.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 682 (Mar. 2, 1907, ch. 2564, 34 Stat. 1246; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; May 9, 1942, ch. 295, § 1, 56 Stat. 271).

The word "dismissing" was substituted for "sustaining a motion to dismiss" in two places for conciseness and clarity, there being no difference in effect of a decision of dismissal whether made on motion or by the court sua sponte.

Minor changes were made to conform to Rule 12 of the Federal Rules of Criminal Procedure. The final

sentence authorizing promulgation of rules is omitted as redundant.

1949 ACT

This section [section 58] corrects a typographical error in the second paragraph of section 3731 of title 18, U.S.C., and conforms the language of the fifth, tenth, and eleventh paragraphs of such section 3731 with the changed nomenclature of title 28, U.S.C., Judiciary and Judicial Procedure. See sections 41, 43, and 451 of the latter title.

AMENDMENTS

1971—First par. Pub. L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub. L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub. L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub. L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub. L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

1968—Pub. L. 90-351 inserted the eighth par. providing for an appeal by the United States from decisions sustaining motions to suppress evidence and substituted in the tenth par. "defendant shall be released in accordance with chapter 207 of this title" for "defendant shall be admitted to bail on his own recognizance", respectively.

1949—Act May 24, 1949, substituted "invalidity" for "validity" following "upon the" in the second par., and conformed the language of the fifth, tenth, and eleventh pars. to the changed nomenclature of the courts.

SAVINGS PROVISION

Section 14(b) of Pub. L. 91-644 provided that: "The amendments made by this section [to this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971]."

CROSS REFERENCES

Appellate jurisdiction of courts of appeals, see section 1291 of Title 28, Judiciary and Judicial Procedure.

§ 3732. Taking of appeal; notice; time—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Taking appeal; notice, contents, signing; time, Rule 37(a).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by Rule 3, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3733. Assignment of errors—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Assignments of error on appeal abolished, Rule 37(a)(1).

Necessity of specific objection in order to assign error in instructions, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1947, eff. July 1, 1968, and is now covered by Rule 3, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3734. Bill of exceptions abolished—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Exceptions abolished, Rule 51.

Bill of exceptions not required, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by Rule 3, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3735. Bail on appeal or certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bail on appeal or certiorari; application, Rules 38(c) and 46(a)(2).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 38(c) of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by rule 9, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 46 was amended as part of the Bail Reform Act in 1966 and in 1972, and some provisions originally contained in Rule 46 are now covered by this chapter,

see Notes of Advisory Committee on Rules and Amendment notes under Rule 46, this Appendix.

§ 3736. Certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Petition to Supreme Court, time, Rule 37(b).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968. Provisions of such former rule for certiorari are now covered by rule 19 et seq. of the Rules of the United States Supreme Court, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3737. Record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Preparation, form; typewritten record, Rule 39(b).
Exceptions abolished, Rule 51.
Bill of exceptions unnecessary, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rules 37 and 39 of the Federal Rules of Criminal Procedure were abrogated Dec. 4, 1967, eff. July 1, 1968, and are now covered by Rule 10, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Poor persons, costs of printing transcript and record on appeal in criminal cases to be paid by United States, see sections 753 and 1915 of Title 28, Judiciary and Judicial Procedure.

§ 3738. Docketing appeal and record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Filing record on appeal and docketing proceeding; time, Rule 39(c).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by Rules 10 to 12, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3739. Supervision—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Control and supervision in appellate court, Rule 39(a).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by Rule 27, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3740. Argument—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Setting appeal for argument; preference to criminal appeals, Rule 39(d).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is now covered by Rule 34, Federal Rules of Appellate Procedure, set out in Title 28, Appendix, Judiciary and Judicial Procedure.

§ 3741. Harmless error and plain error—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Error or defect as affecting substantial rights, Rule 52.
Defects in indictment, Rule 7.
Waiver of error, Rules 12(b)(2) and 30.

(June 25, 1948, ch. 645, 62 Stat. 846.)

CHAPTER 237—RULES OF CRIMINAL PROCEDURE

Sec.
3771. Procedure to and including verdict
3772. Procedure after verdict.

§ 3771. Procedure to and including verdict

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, and in proceedings before United States magistrates. Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court.

(June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 59, 63 Stat. 98; May 10, 1950, ch. 174, § 1, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(2), 82 Stat. 1115.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 687, 689 (June 29, 1940, ch. 445, 54 Stat. 688; Nov. 21, 1941, ch. 492, 55 Stat. 779).

The words "in the United States Court for China" were omitted inasmuch as that court is no longer functioning. The Secretary of State by an arrangement with China has relinquished the extraterritorial jurisdiction previously exercised by the United States in China. The Legislative and Judicial Appropriation Act of June 28, 1943, made no appropriation for the United States Court for China. Appropriations for other courts were made in title II of chapter 173, 57 Stat. 241. The last appropriation for the United States Court for China was in the act of July 2, 1942, ch. 472, title IV, 56 Stat. 502. The United States Court for China is not mentioned in rule 54(a) of the Federal Rules of Criminal Procedure in which the courts to which the rules apply are listed.

The only other changes were phraseological and the consolidation of the provision for criminal contempt

of section 689 of title 18, U.S.C., 1940 ed., in this section.

1949 ACT

This section [section 59] amends section 3771 of title 18, U.S.C., to permit amended procedural rules to be reported to Congress by the Chief Justice, instead of being channeled through the Attorney General as at present. The present provision that the Attorney General should act as a transmitting agent between the Supreme Court and the Congress is inconsistent with the plan of title 28, U.S.C., under which the Attorney General no longer acts as the administrative officer of the Federal courts. The provision was continued in section 3771 of title 18 inadvertently. Similar amendments are proposed for sections 2072 and 2073 of title 28 by other sections of this bill.

The other amendments by this section conform section 3771 with the changed nomenclature of title 28, U.S.C., Judiciary and Judicial Procedure. (See secs. 41, 43, and 451 of the latter title.)

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendments. See Senate Report No. 1620, amendments Nos. 11 and 12, 80th Cong.

AMENDMENTS

1968—Pub. L. 90-578 substituted "United States magistrates" for "United States commissioners".

1959—Pub. L. 86-3 eliminated provisions which related to the Supreme Court of Hawaii. See section 91 of Title 28, Judiciary and Judicial Procedure, and notes thereunder.

1958—Pub. L. 85-508 eliminated provisions which related to the District Court for the Territory of Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

1950—Act May 10, 1950, allowed proposed rule changes to be submitted to Congress not later than May 1st of each year and to become effective 90 days from the date of their being reported from the Supreme Court.

1949—Act May 24, 1949, changed nomenclature of the courts, and permitted amended procedural rules to be reported to the Congress by the Chief Justice instead of by the Attorney General.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as an Effective Date of 1968 Amendment note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-3 effective upon the admission of the State of Hawaii into the Union, see note set out under section 1252 of Title 28, Judiciary and Judicial Procedure. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding section 21 of Title 48, Territories and Insular Possessions.

AMENDMENTS TO CRIMINAL RULES UNDER SUPREME COURT ORDER OF APRIL 26, 1976; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 94-349, § 1, July 8, 1976, 90 Stat. 822, provided: "That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code the amendments to rules 6(e), 23, 24, 40.1 and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. The remainder of the proposed amendments to the Federal Rules of Criminal Procedure [rules 6(f), 41(a), (c)(1), and 50(b)] shall become effective August 1, 1976, pursuant to law."

AMENDMENTS TO CRIMINAL RULES UNDER SUPREME COURT ORDER OF APRIL 22, 1974; POSTPONEMENT OF EFFECTIVE DATE UNTIL AUGUST 1, 1975

Pub. L. 93-361, July 30, 1974, 88 Stat. 397, provided that, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code, the effective date of the proposed amendments to the Federal Rules of Criminal Procedure which were embraced by the order entered by the United States Supreme Court on Apr. 22, 1974, and which were transmitted to the Congress by the Chief Justice on Apr. 22, 1974, was postponed until August 1, 1975.

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974

Pub. L. 94-64, § 2, July 31, 1975, 89 Stat. 370, provided that the amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure, adding rules 12.1, 12.2, and 29.1 and amending rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43, which were embraced in the order of that court on Apr. 22, 1974 were approved except as otherwise provided in Pub. L. 94-64 making further amendments to rules 4, 9(a), 11, 12, 12.1, 12.2, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43, and all such amendments to the rules would take effect on Dec. 1, 1975, except for rule 11(e)(6), which would take effect on Aug. 1, 1975.

CONGRESSIONAL APPROVAL REQUIREMENT FOR PROPOSED RULES OF EVIDENCE FOR UNITED STATES COURTS AND AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE AND CRIMINAL PROCEDURE; SUSPENSION OF EFFECTIVENESS OF SUCH RULES

Pub. L. 93-12, Mar. 30, 1973, 87 Stat. 9, provided that notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which were embraced by the orders entered by the Supreme Court of the United States on Monday, Nov. 20, 1972, and Monday, Dec. 18, 1972, were to have no force or effect except to the extent, and with such amendments, as they were expressly approved by Act of Congress.

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED NOVEMBER 20, 1972 AND DECEMBER 18, 1972

Pub. L. 93-595, § 3, Jan. 2, 1975, 88 Stat. 1949, provided that Congress expressly approved the amendments to rules 30(c), 32(c), 43, and 44.1 of the Federal Rules of Civil Procedure and rules 26, 26.1, and 28 of the Federal Rules of Criminal Procedure included in the orders entered by the Supreme Court of the United States on Nov. 20, 1972, and Dec. 18, 1972, and that such amendments were to take effect on the 180th day beginning after Jan. 2, 1975.

SHORT TITLE OF 1975 AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

Pub. L. 94-64, § 1, July 31, 1975, 89 Stat. 370, provided: "That this Act [which approved the amendments to the Federal Rules of Criminal Procedure proposed by the United States Supreme Court embraced in the order of that Court on Apr. 22, 1974, and which made further amendments to the Rules as so amended by the Court] may be cited as the 'Federal Rules of Criminal Procedure Amendments Act of 1975'."

CROSS REFERENCES

District Court of Guam, rules promulgated under this section as applicable, see section 1424 of Title 48, Territories and Insular Possessions.

Judicial districts comprising the United States district courts, see sections 81 to 131 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 48 section 1424.

§ 3772. Procedure after verdict

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, in the United States courts of appeals, and in the Supreme Court of the United States. This section shall not give the Supreme Court power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within ten days after entry of such plea, and before sentence is imposed.

The right of appeal shall continue in those cases in which appeals are authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

The Supreme Court may fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force.

Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court.

(June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 60, 63 Stat. 98; July 7, 1958, Pub. L. 85-508, § 12(*l*), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, § 14(h), 73 Stat. 11.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 688, 689 (Feb. 24, 1933, ch. 119, §§ 1-3, 47 Stat. 904; Mar. 8, 1934, ch. 49, 48 Stat. 399; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Nov. 21, 1941, ch. 492, 55 Stat. 779.)

The words "in the United States Court for China" were omitted, since that court no longer functions. (See reviser's note under section 3771 of this title.) The Supreme Court in promulgating rules under this section did not include the United States Court for China among the courts to which the rules were applicable.

The courts of appeals of the several judicial circuits are given jurisdiction of appeals from "all final decisions of the district courts" except where a direct review may be had in the Supreme Court of the United States by section 1291 of the proposed revision of title 28. See, also, section 1295 of that revision as to circuits in which decisions are reviewable. This is the statutory basis upon which rests the defendant's right of appeal in criminal cases.

Minor changes were made in phraseology.

1949 ACT

This section [section 60] conforms the first paragraph of section 3772 of title 18, U.S.C., with the changed nomenclature of title 28, U.S.C., Judiciary and Judicial Procedure. (See secs. 41, 43, and 451 of the latter title.) A typographical error is also corrected.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment. See Senate Report No. 1620, amendment No. 13, 80th Cong.

AMENDMENTS

1959—Pub. L. 86-3 eliminated provisions which related to the Supreme Court of Hawaii. See section 91 of Title 28, Judiciary and Judicial Procedure, and notes thereunder.

1958—Pub. L. 85-508 eliminated provisions which related to the District Court for the Territory of Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

1949—Act May 24, 1949, changed nomenclature of the courts in the first par., and substituted "he" for "be".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-3 effective upon the admission of the State of Hawaii into the Union, see note set out under section 1252 of Title 28, Judiciary and Judicial Procedure. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

District Court of Guam, rules promulgated under this section as applicable, see section 1424 of Title 48, Territories and Insular Possessions.

Right of appeal by defendant, see section 1291 of Title 28, Judiciary and Judicial Procedure.

United States, appeal by, see section 3731 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 48 section 1424.

PART III—PRISONS AND PRISONERS

Chap.		Sec.
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Amendments

1966—Pub. L. 89-793, title VI, § 603, Nov. 8, 1966, 80 Stat. 1450, added item "314. Narcotic addicts".

CHAPTER 301—GENERAL PROVISIONS

Sec.
4001. Limitation on detention; control of prisons.
4002. Federal prisoners in State institutions; employment.
4003. Federal institutions in States without appropriate facilities.
4004. Oaths and acknowledgments.
4005. Medical relief; expenses.
4006. Subsistence for prisoners.
4007. Expenses of prisoners.
4008. Transportation expenses.
4009. Appropriations for sites and buildings.
4010. Acquisition of additional land.
4011. Disposition of cash collections for meals, laundry, etc.

Amendments

1971—Pub. L. 92-128, § 1(c), Sept. 25, 1971, 85 Stat. 347, substituted "Limitation on detention; control of prisons" for "Control by Attorney General" in item 4001.

1966—Pub. L. 89-554, § 3(e), Sept. 6, 1966, 80 Stat. 610, added items 4010 and 4011.

§ 4001. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

(June 25, 1948, ch. 645, 62 Stat. 847; Sept. 25, 1971, Pub. L. 92-128, § 1(a), (b), 85 Stat. 347.)

Historical and Revision Notes

Based on title 18, U.S.C., 1934 ed., §§ 741 and 753e (Mar. 3, 1891, ch. 529, §§ 1, 4, 26 Stat. 839; May 14, 1930, ch. 274, § 6, 46 Stat. 326).

This section consolidates said sections 741 and 753e with such changes of language as were necessary to effect consolidation.

"The Classification Act, as amended," was inserted more clearly to express the existing procedure for appointment of officers and employees as noted in letter of the Director of Bureau of Prisons, June 19, 1944.

References in Text

The civil-service laws, referred to in subsec. (b)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

The Classification Act, as amended, referred to in subsec. (b)(1), originally was the Classification Act of 1923, Mar. 4, 1923, ch. 265, 42 Stat. 1488, as amended, which was repealed by section 1202 of the Classification Act of 1949, Oct. 28, 1949, ch. 782, 63 Stat. 972. Section 1106(a) of the 1949 Act provided that references in other laws to the Classification Act of 1923 shall be held and considered to mean the Classification Act of 1949. The Classification Act of 1949 was in turn repealed by Pub. L. 89-554, § 8(a), 80 Stat. 632, and reenacted by the first section thereof as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

Amendments

1971—Pub. L. 92-128, § 1(b), substituted "Limitation on detention; control of prisons" for "Control by Attorney General" in the section heading.

Subsec. (a). Pub. L. 92-128, § 1(a), added subsec. (a).

Subsec. (b). Pub. L. 92-128, § 1(a), designated the first and second pars. as pars. (1) and (2) of subsec. (b) of this section.

§ 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

(June 25, 1948, ch. 645, 62 Stat. 847.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 753b, (May 14, 1930, ch. 274, § 3, 46 Stat. 325).

Changes were made in phraseology. The first sentence was incorporated in section 4042 of this title.

Cross References

Bureau of Prisons, see section 4041 et seq. of this title.

Employment in Federal prisons, see section 4121 et seq. of this title.

[1] Item 319 is editorially inserted since chapter was enacted without a concurrent insertion in Part analysis.

§ 4003. Federal institutions in States without appropriate facilities

If by reason of the refusal or inability of the authorities having control of any jail, workhouse, penal, correctional, or other suitable institution of any State or Territory, or political subdivision thereof, to enter into a contract for the imprisonment, subsistence, care, or proper employment of United States prisoners, or if there are no suitable or sufficient facilities available at reasonable cost, the Attorney General may select a site either within or convenient to the State, Territory, or judicial district concerned and cause to be erected thereon a house of detention, workhouse, jail, prison-industries project, or camp, or other place of confinement, which shall be used for the detention of persons held under authority of any Act of Congress, and of such other persons as in the opinion of the Attorney General are proper subjects for confinement in such institutions.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753c (May 14, 1930, ch. 274, § 4, 46 Stat. 326).

Words "with or without hard labor" were omitted as unnecessary in view of omission of "hard labor" as part of the punishment. (See reviser's note under section 1 of this title.)

The phrase "held under authority of any Act of Congress," was substituted for the following "held as material witnesses, persons awaiting trial, persons sentenced to imprisonment and awaiting transfer to other institutions, persons held for violation of the immigration laws or awaiting deportation, and for the confinement of persons convicted of offenses against the United States and sentenced to imprisonment".

Minor changes in arrangement and phraseology were made.

CROSS REFERENCES

Appropriations for sites and buildings, see section 4009 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4009 of this title.

§ 4004. Oaths and acknowledgments

The wardens and superintendents, associate wardens and superintendents, chief clerks, record clerks, and parole officers, of Federal penal or correctional institutions, may administer oaths to and take acknowledgments of officers, employees, and inmates of such institutions, but shall not demand or accept any fee or compensation therefor.

(June 25, 1948, ch. 645, 62 Stat. 848; July 7, 1955, ch. 282, 69 Stat. 282.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 754 (Feb. 11, 1938, ch. 24, §§ 1, 2, 52 Stat. 28).

Section was extended to include superintendents and associate superintendents.

Minor changes were made in phraseology. Words "the authority conferred by" were omitted as surplusage.

AMENDMENTS

1955—Act July 7, 1955, permitted chief clerks, record clerks, and parole officers to administer oaths and take acknowledgments.

§ 4005. Medical relief; expenses

(a) Upon request of the Attorney General, the Federal Security Administrator shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions.

(b) The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the Attorney General may make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, for payment of compensation, allowances, and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 751, 752 (May 13, 1930, ch. 256, §§ 1, 2, 46 Stat. 273; Reorg. Plan No. I, §§ 201, 205, 4 F.R. 2728, 2729, 53 Stat. 1424, 1425).

Section consolidates sections 751 and 752 of title 18, U.S.C., 1940 ed., as subsections (a) and (b), respectively.

"Federal Security Administrator" was substituted for "Federal Security Agency."

Functions of the Secretary of the Treasury were transferred to the Federal Security Administrator by Reorg. Plan No. I, § 205, 4 F.R. 2729, 53 Stat. 1425. (See note under section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

The first part of said section 751, which read "Authorized medical relief under the Department of Justice in Federal penal and correctional institutions shall be supervised and furnished by personnel of the Public Health Service, and" was omitted as surplusage, considering the remainder of the text.

Minor changes of phraseology were made.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare, and the office of Federal Security Administrator was abolished by sections 5 and 8 of Reorg. Plan No. 1 of 1953, as amended, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 250.

§ 4006. Subsistence for prisoners

The Attorney General shall allow and pay only the reasonable and actual cost of the subsistence of prisoners in the custody of any mar-

shal of the United States, and shall prescribe such regulations for the government of the marshals as will enable him to determine the actual and reasonable expenses incurred.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 703 (R.S. § 5545; Mar. 2, 1911, ch. 192, 36 Stat. 1003).

The provisions relating to the Washington Asylum and Jail are now included in the District of Columbia Code. (See D. C. Code, 1940 ed., § 24-421.)

Changes of phraseology were made.

§ 4007. Expenses of prisoners

The expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 701 (R.S. § 5536).

Provision authorizing expenses for transportation was omitted as covered by similar provision in section 4008 of this title.

Minor changes of phraseology were made.

§ 4008. Transportation expenses

Prisoners shall be transported by agents designated by the Attorney General or his authorized representative.

The reasonable expense of transportation, necessary subsistence, and hire and transportation of guards and agents shall be paid by the Attorney General from such appropriation for the Department of Justice as he shall direct.

Upon conviction by a consular court or court martial the prisoner shall be transported from the court to the place of confinement by agents of the Department of State, the Army, Navy, or Air Force, as the case may be, the expense to be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 849; May 24, 1949, ch. 139, § 61, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 753g (May 14, 1930, ch. 274, § 8, 46 Stat. 327).

The second paragraph was originally a proviso.

Minor changes of phraseology were made.

1949 ACT

This section [section 61] corrects the third paragraph of section 4008 of title 18, U.S.C., by redesignating the "War Department" as the "Department of the Army", to conform to such redesignation by act of July 26, 1947 (ch. 343, title II, § 205(a), 61 Stat. 501), and by inserting a reference to the Department of the Air Force, in view of the creation of such Department by the same act.

AMENDMENTS

1949—Act May 24, 1949, substituted "the Army, Navy, or Air Force" for "War, or the Navy".

CROSS REFERENCES

Expense of transferring prisoners to prison camps, see section 4125 of this title.

Transfer of Federal prisoners at request of state authorities; expense, see section 4085 of this title.

§ 4009. Appropriations for sites and buildings

The Attorney General may authorize the use of a sum not to exceed $100,000 in each instance, payable from any unexpended balance of the appropriation "Support of United States prisoners" for the purpose of leasing or acquiring a site, preparation of plans, and erection of necessary buildings under section 4003 of this title.

If in any instance it shall be impossible or impracticable to secure a proper site and erect the necessary buildings within the above limitation the Attorney General may authorize the use of a sum not to exceed $10,000 in each instance, payable from any unexpended balance of the appropriation "Support of United States prisoners" for the purpose of securing options and making preliminary surveys or sketches.

Upon selection of an appropriate site the Attorney General shall submit to Congress an estimate of the cost of purchasing same and of remodeling, constructing, and equipping the necessary buildings thereon.

(June 25, 1948, ch. 645, 62 Stat. 849.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753d (May 14, 1930, ch. 274, § 5, 46 Stat. 326).

Minor changes of phraseology were made.

§ 4010. Acquisition of additional land

The Attorney General may, when authorized by law, acquire land adjacent to or in the vicinity of a Federal penal or correctional institution if he considers the additional land essential to the protection of the health or safety of the inmates of the institution.

(Added Pub. L. 89-554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341f	July 28, 1950, ch. 503, § 7, 64 Stat. 381. Sept. 16, 1959, Pub. L. 86-286, 73 Stat. 567.

The reference to an appropriation law is omitted as covered by the words "when authorized by law".

§ 4011. Disposition of cash collections for meals, laundry, etc.

Collections in cash for meals, laundry, barber service, uniform equipment, and other items for which payment is made originally from appropriations for the maintenance and operation of Federal penal and correctional institutions, may be deposited in the Treasury to the credit of the appropriation currently available for those items when the collection is made.

(Added Pub. L. 89-554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341g	July 28, 1950, ch. 503, § 8, 64 Stat. 381.

CHAPTER 303—BUREAU OF PRISONS

Sec.
4041. Bureau of Prisons; director and employees.
4042. Duties of Bureau of Prisons.

§ 4041. Bureau of Prisons; director and employees

The Bureau of Prisons shall be in charge of a director appointed by and serving directly under the Attorney General at a salary of $10,000 a year. The Attorney General may appoint such additional officers and employees as he deems necessary.

(June 25, 1948, ch. 645, 62 Stat. 849.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753 (May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The entire second sentence was omitted as executed. All powers and authority originally vested in the former Superintendent of Prisons are now possessed by the Bureau of Prisons.

Minor changes of phraseology were made.

COMPENSATION OF DIRECTOR

Compensation of Director, see section 5316(58) of Title 5, Government Organization and Employees.

§ 4042. Duties of Bureau of Prisons

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) Provide technical assistance to State and local governments in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

(June 25, 1948, ch. 645, 62 Stat. 849; July 1, 1968, Pub. L. 90-371, 82 Stat. 280.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753a, 753b, (May 14, 1930, ch. 274, §§ 2, 3, 46 Stat. 325).

Because of similarity in the provisions, the first sentence of section 753b of title 18, U.S.C., 1940 ed., was consolidated with section 753a of title 18, U.S.C., 1940 ed., to form this section.

Minor changes were made in phraseology.

The remainder of said section 753b of title 18, U.S.C., 1940 ed., is incorporated in section 4002 of this title.

AMENDMENTS

1968—Pub. L. 90-371 added cl. (4).

CROSS REFERENCES

Expenses of transportation of prisoners, see section 4008 of this title.

CHAPTER 305—COMMITMENT AND TRANSFER

Sec.
4081. Classification and treatment of prisoners.
4082. Commitment to Attorney General; residential treatment centers, extension of limits of confinement; work furlough.
4083. Penitentiary imprisonment; consent.
4084. Copy of commitment delivered with prisoner.
4085. Transfer for state offense; expense.
4086. Temporary safe-keeping of federal offenders by marshals.

AMENDMENTS

1965—Pub. L. 89-176, § 2, Sept. 10, 1965, 79 Stat. 675, substituted "residential treatment centers, extension of limits of confinement; work furlough." for "transfer." following "Commitment to Attorney General" in item 4082.

§ 4081. Classification and treatment of prisoners

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

(June 25, 1948, ch. 645, 62 Stat. 850.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 907 (May 27, 1930, ch. 339, § 7, 46 Stat. 390).

Language of section is so changed as to make one policy for all institutions, thus clarifying the manifest intent of Congress.

Minor changes were made in phraseology.

§ 4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another.

(c) The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to—

(1) visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be granted to permit a visit to a dying relative,

attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with the public interest; or

(2) work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed, provided that—

(i) representatives of local union central bodies or similar labor union organizations are consulted;

(ii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(iii) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, shall be deemed an escape from the custody of the Attorney General punishable as provided in chapter 35 of this title.

(e) The authority conferred upon the Attorney General by this section shall extend to all persons committed to the National Training School for Boys.

(f) As used in this section—

the term "facility" shall include a residential community treatment center; and

the term "relative" shall mean a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(June 25, 1948, ch. 645, 62 Stat. 850; Sept. 10, 1965, Pub. L. 89-176, § 1, 79 Stat. 674; Dec. 28, 1973, Pub. L. 93-209, 87 Stat. 907.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753f (May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Words "by the juvenile court of the District of Columbia, as well as to those committed by any court of the United States," at end of section were omitted as unnecessary, and word "all" inserted before "persons", without change of meaning.

Provision against penitentiary imprisonment for a term of 1 year or less without consent of defendant was incorporated in section 4083 of this title.

The phrase "if in his judgment it shall be for the well-being of the prisoner or relieve overcrowded or unhealthful conditions in the institution where such person is confined or for other reasons", was omitted as unnecessary.

Changes were made in phraseology.

This section supersedes section 705 of title 18, U.S.C., 1940 ed., providing for execution of sentences in houses of correction or reformation; and section 748 of title 18, U.S.C., 1940 ed., providing for confinement of prisoners in United States Disciplinary Barracks.

AMENDMENTS

1973—Subsec. (c)(1). Pub. L. 93-209 provided for extension of limits to permit the establishment or reestablishment of family and community ties and deleted word "only" following "may be granted".

1965—Subsec. (a). Pub. L. 89-176 designated as subsec. (a) the former first unnumbered paragraph of the section and removed "or his authorized representative" following "Attorney General of the United States".

Subsec. (b). Pub. L. 89-176 designated as subsec. (b) the former second and third unnumbered paragraphs of the section, added "or facility" following "appropriate institution", substituted "may at any time transfer a person from one place of confinement to another" for "may order any inmate transferred from one institution to another", and made minor changes in language.

Subsecs. (c), (d). Pub. L. 89-176 added subsecs. (c) and (d).

Subsec. (e). Pub. L. 89-176 designated as subsec. (e) the former fourth and last unnumbered paragraph of the section.

Subsec. (f). Pub. L. 89-176 added subsec. (f).

EX. ORD. NO. 11755. PRISON LABOR

Ex. Ord. No. 11755, Dec. 29, 1973, 39 F.R. 779, provided:

The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.

Under section 4082 of title 18 of the United States Code, the Attorney General is empowered to authorize Federal prisoners to work at paid employment in the community during their terms of imprisonment under conditions that protect against both the exploitation of convict labor and unfair competition with free labor.

Several states and other jurisdictions have similar laws or regulations under which individuals confined for violations of the laws of those places may be authorized to work at paid employment in the community.

Executive Order No. 325A, which was originally issued by President Theodore Roosevelt in 1905, prohibits the employment, in the performance of Federal contracts, of any person who is serving a sentence of imprisonment at hard labor imposed by a court of a State, territory, or municipality.

I have now determined that Executive Order No. 325A should be replaced with a new Executive Order which would permit the employment of non-Federal prison inmates in the performance of Federal contracts under terms and conditions that are comparable to those now applicable to inmates of Federal prisons.

NOW, THEREFORE, pursuant to the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) All contracts involving the use of appropriated funds which shall hereafter be entered into by any department or agency of the executive branch for performance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Is-

lands, Guam, American Samoa, or the Trust Territory of the Pacific Islands shall, unless otherwise provided by law, contain a stipulation forbidding in the performance of such contracts, the employment of persons undergoing sentences of imprisonment which have been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by a contractor in the performance of such contracts of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by a contractor in the performance of such contracts of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if

(1)(A) The worker is paid or is in an approved work training program on a voluntary basis;

(B) Representatives of local union central bodies or similar labor union organizations have been consulted;

(C) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(D) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(2) The Attorney General has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of this order.

(b) After notice and opportunity for hearing, the Attorney General shall revoke any such certification under section 1(a)(2) if he finds that the work-release program of the jurisdiction involved is not being conducted in conformity with the requirements of this order or with its intent or purposes.

SEC. 2. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the executive branch shall be revised to reflect the policy prescribed by this order.

SEC. 3. Executive Order No. 325A is hereby superseded.

SEC. 4. This order shall be effective as of January 1, 1974.

RICHARD NIXON.

CROSS REFERENCES

Expense of transferring prisoners at prison camps, see section 4125 of this title.

Expenses of transportation of prisoners, see section 4008 of this title.

Penitentiary imprisonment for term of one year prohibited except with consent of defendant, see section 4083 of this title.

Transfer of Federal prisoner to State penal or correctional institution, see section 4085 of this title.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Form of judgment and commitment, see form 25, Appendix to this title.

§ 4083. Penitentiary imprisonment; consent

Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary.

A sentence for an offense punishable by imprisonment for one year or less shall not be served in a penitentiary without the consent of the defendant.

(June 25, 1948, ch. 645, 62 Stat. 850; Sept. 14, 1959, Pub. L. 86-256, 73 Stat. 518.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753f, 762 (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1896, ch. 400, § 1, 29 Stat. 380; May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Said section 762 was condensed and simplified and extended to all penitentiaries instead of to Leavenworth only, since the section is merely declaratory of existing law. (See section 1 of this title classifying offenses and notes thereunder.)

The second paragraph is derived from said section 753f of title 18, U.S.C., 1940 ed.

Minor changes of phraseology were made.

AMENDMENTS

1959—Pub. L. 86-256 substituted "punishable by imprisonment for" for the words "and sentenced to terms of imprisonment of" in the first sentence.

CROSS REFERENCES

Designation of place of confinement by Attorney General, see section 4082 of this title.

Felony and misdemeanor defined, see section 1 of this title.

§ 4084. Copy of commitment delivered with prisoner

Whenever a prisoner is committed to a warden, sheriff or jailer by virtue of a writ, or warrant, a copy thereof shall be delivered to such officer as his authority to hold the prisoner, and the original shall be returned to the proper court or officer, with the officer's return endorsed thereon.

(June 25, 1948, ch. 645, 62 Stat. 850.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 603 (R.S. § 1028).

Word "warden," was inserted before "sheriff" to cover all officers receiving prisoners. Other minor changes of phraseology were made.

CROSS REFERENCES

Orders respecting persons in custody, see section 3012 of this title.

Writs and process under seal of court, see section 1691 of Title 28, Judiciary and Judicial Procedure.

FEDERAL FORMS OF CRIMINAL PROCEDURE

Form of judgment and commitment, see form 25, Appendix to this title.

Return of judgment and commitment, see form 25.

§ 4085. Transfer for State offense; expense

(a) Whenever any federal prisoner has been indicted, informed against, or convicted of a felony in a court of record of any State or the District of Columbia, the Attorney General shall, if he finds it in the public interest to do so, upon the request of the Governor or the executive authority thereof, and upon the presentation of a certified copy of such indictment, information or judgment of conviction, cause such person, prior to his release, to be transferred to a penal or correctional institution within such State or District.

If more than one such request is presented in respect to any prisoner, the Attorney General

shall determine which request should receive preference.

The expense of personnel and transportation incurred shall be chargeable to the appropriation for the "Support of United States prisoners."

(b) This section shall not limit the authority of the Attorney General to transfer prisoners pursuant to other provisions of law.

(June 25, 1948, ch. 645, 62 Stat. 850.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 733, 733a, 733b (Apr. 30, 1940, ch. 176, §§ 1, 2, 3, 54 Stat. 175, 176).

Section consolidates sections 733, 733a, and 733b of title 18, U.S.C., 1940 ed.

Definitions of "indictment," "indicted," and "State" were omitted as unnecessary in view of the inclusion of equivalent terms in the revised text.

Necessary changes were made in translations of text references and in phraseology.

§ 4086. Temporary safe-keeping of federal offenders by marshals

United States marshals shall provide for the safekeeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 691, 692, (R.S. §§ 5537, 5538).

Said section 691 of title 18, U.S.C., 1940 ed., is superseded by sections 753b and 753c of title 18, U.S.C., 1940 ed., which are incorporated in sections 4002, 4003 and 4042 of this title.

This section is rewritten to retain the intent of section 692 of title 18, U.S.C., 1940 ed., which was to insure a safekeeping of United States prisoners until their commitment or confinement in Federal penal institutions. The language conforms with that of said sections 692 and 753b.

Minor changes were made in phraseology.

CROSS REFERENCES

Bureau of Prisons responsible for safekeeping of United States prisoners, see sections 4002 and 4042 of this title.

Construction of Federal prisons in States without facilities for Federal prisoners, see sections 4003 and 4009 of this title.

Designation by Attorney General of place of confinement and transfer of place of confinement, see section 4082 of this title.

CHAPTER 307—EMPLOYMENT

Sec.
4121. Federal Prison Industries; board of directors.
4122. Administration of Federal Prison Industries.
4123. New industries.
4124. Purchase of prison-made products by Federal departments.
4125. Public works; prison camps.
4126. Prison Industries Fund; use and settlement of accounts.
4127. Prison Industries report to Congress.
4128. Enforcement by Attorney General.

CROSS REFERENCES

No postal equipment or supplies to be manufactured by convict labor except as provided in this chapter, see section 2201 of Title 39, Postal Service.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 2201; title 41 sections 42, 48.

§ 4121. Federal Prison Industries; board of directors

"Federal Prison Industries", a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 62, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744i, 744j (June 23, 1934, ch. 736, §§ 1, 2, 48 Stat. 1211).

Section consolidates sections 744i and 744j of title 18, U.S.C., 1940 ed. The former was rewritten omitting unnecessary recital as to policy and expressing the original language of the two sections more logically.

Changes were made in transportation and phraseology.

1949 ACT

This section [section 62] incorporates in section 4121 of title 18, U.S.C., with changes in phraseology, the provisions of section 3 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), which was enacted subsequent to the enactment of the revision of title 18 and which provided for appointment of an additional member of the board of directors of the Federal Prison Industries, as a representative of the Secretary of Defense.

AMENDMENTS

1949—Act May 24, 1949, made a representative of the Secretary of Defense a member of the board of directors.

§ 4122. Administration of Federal Prison Industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b) Its board of directors shall provide employment for all physically fit inmates in the United States penal and correctional institutions, diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.

(c) Its board of directors may provide for the vocational training of qualified inmates without regard to their industrial or other assignments.

(d)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any department or agency comprising the Department of Defense, to the extent and under terms and conditions agreed upon by the Secretary of Defense, the Attorney

General and the Board of Directors of Federal Prison Industries.

(2) Any department or agency of the Department of Defense may, without exchange of funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under paragraph (1) of this subsection.

(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Commissioner of the District of Columbia to the extent and under terms and conditions agreed upon by the Commissioner, the Attorney General, and the Board of Directors of Federal Prison Industries.

(2) The Commissioner of the District of Columbia may, without exchange of funds, transfer to the Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled "An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes."

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 63, 63 Stat. 98; Oct. 31, 1951, ch. 655, § 31, 65 Stat. 722; Dec. 27, 1967, Pub. L. 90–226, title VIII, § 802, 81 Stat. 741.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744a, 744c, 744k (May 27, 1930, ch. 340, §§ 1, 3, 46 Stat. 391; June 23, 1934, ch. 736, § 3, 48 Stat. 1211).

Section consolidates sections 744a, part of 744c, and 744k of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

Provisions in section 744k of title 18, U.S.C., 1940 ed., for transfer of duties to the corporation was omitted as executed.

Other provisions of said section 744c of title 18, U.S.C., 1940 ed., form section 4123 of this title.

Changes were made in phraseology.

1949 ACT

Subsection (c) of section 4122 of title 18, U.S.C., as added by this amendment [see section 63], incorporates provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4126 of such title by another section of this bill.

Subsections (d) and (e) of such section 4122, added by this amendment [see section 63], incorporate, with changes in phraseology, the provisions of sections 1 and 2 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), extending the functions and duties of Federal Prisons Industries, Incorporated, to military disciplinary barracks. Section 3 of such act is incorporated in section 4121 of such title by another section of this bill, and section 4 of such act is classified to section 1621a of title 50, U.S.C., Appendix, War and National Defense.

REFERENCES IN TEXT

The Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled "An Act to establish in the Treasury a correctional institution industries fund for the government of the District of Columbia, and for other purposes", referred to in subsec. (e)(3), is Pub. L. 88–622, Oct. 3, 1964, 78 Stat. 1000, which is not classified to this Code.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–226, § 802(1), (2), denominated existing provisions of subsec. (d) as par. (1) thereof, denominated existing provisions of subsec. (e) as par. (2) of subsec. (d), and substituted reference to par. (1) of this subsection for reference to subsec. (d) of this section.

Subsec. (e). Pub. L. 90–226, § 802(3), added subsec. (e). Former subsec. (e) redesignated as subsec. (d)(2).

1951—Subsec. (d). Act Oct. 31, 1951, substituted "Department of Defense" for "National Military Establishment".

Subsec. (e). Act Oct. 31, 1951, substituted "Department of Defense" for "National Military Establishment".

1949—Act May 24, 1949, designated original first two pars. as subsecs. (a) and (b) and added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

The Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the Office of Mayor of the District of Columbia by section 421 of Pub. L. 93–198, classified to section 1–161 of the District of Columbia Code.

UTILIZATION OF SURPLUS PROPERTY

Act June 29, 1948, ch. 719, § 4, 62 Stat. 1100, provided that:

"For its own use in the industrial employment and training of prisoners and not for transfer or disposition, transfers of surplus property under the Surplus Property Act of 1944 [former sections 1611 to 1646 of Appendix to Title 50, War and National Defense, may be made to Federal Prison Industries, Incorporated, without reimbursement or transfer of funds."

§ 4123. New industries

Any industry established under this chapter shall be so operated as not to curtail the production of any existing arsenal, navy yard, or other Government workshop.

Such forms of employment shall be provided as will give the inmates of all Federal penal and correctional institutions a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release.

The industries may be either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744c (May 27, 1930, ch. 340, § 3, 46 Stat. 391).

A part of said section 744c of title 18, U.S.C., 1940 ed., is incorporated in section 4122 of this title.

References to the Attorney General were omitted because section 744k of title 18, U.S.C., 1940 ed., as originally enacted, provided for the transfer to Federal Prison Industries of the powers and duties then vested in the Attorney General.

References to "this chapter" were substituted for "this section" since the general authority to establish and supervise prison industries is contained in this chapter.

Minor changes of phraseology were made.

§ 4124. Purchase of prison-made products by Federal departments

The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the Director of the Bureau of the Budget, or their representatives. Their decision shall be final and binding upon all parties.

(June 25, 1948, ch. 645, 62 Stat. 851; Oct. 31, 1951, ch. 655, § 32, 65 Stat. 723.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 744g (May 27, 1930, ch. 340, § 7, 46 Stat. 392).

The revised section substituted the Director of the Bureau of Federal Supply of the Treasury Department for the General Supply Committee, the functions of the latter having been transferred to the Procurement Division of the Treasury Department by Executive Order No. 6166, § 1, June 10, 1933, and the name of that unit having been changed to Bureau of Federal Supply by order of the Secretary of the Treasury effective January 1, 1947, 11 Federal Register No. 13,638. The Bureau of the Budget was substituted for the Bureau of Efficiency which was abolished by Act of March 3, 1933, ch. 212, § 17, 47 Stat. 1519, without transferring its functions elsewhere. However, the Bureau of the Budget performs similar duties and its Director logically should serve on the arbitration board.

Reference to authority for appropriations was omitted and words "by this chapter" substituted therefor.

The word "agencies" was substituted for "independent establishments" to avoid any possibility of ambiguity. See definition of "agency" in section 6 of this title.

Amendments

1951—Act Oct. 31, 1951, substitued in second paragraph "Administrator of General Services" for "Director of the Bureau of Federal Supply, Department of the Treasury".

Transfer of Functions

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget as Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Section 103 of Reorg. Plan No. 2 of 1970 transferred all records, property, personnel, and funds of the Bureau to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in title 41 section 48.

§ 4125. Public works; prison camps

(a) The Attorney General may make available to the heads of the several departments the services of United States prisoners under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building levees, and constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated by Congress.

(b) The Attorney General may establish, equip, and maintain camps upon sites selected by him elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(c) The expenses of transferring and maintaining prisoners at such camps and of operating such camps shall be paid from the appropriation "Support of United States prisoners", which may, in the discretion of the Attorney General, be reimbursed for such expenses.

(d) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe.

(e) All other laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

(June 25, 1948, ch. 645, 62 Stat. 852.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 744b, 851, 853, 854, 855 (Feb. 26, 1929, ch. 336, §§ 1, 3, 4, 5, 45 Stat. 1318; May 27, 1930, ch. 340, § 2, 46 Stat. 391).

Section consolidates section 744b of title 18, U.S.C., 1940 ed., with those portions of sections 851, 853–855 of title 18, U.S.C., 1940 ed., which may not have been superseded by section 744b of said title.

Section 851 of title 18, U.S.C., 1940 ed., was superseded except for the proviso which formed the basis for the added words "elsewhere than upon Indian reservations".

Section 855 of title 18, U.S.C., 1940 ed., was superseded by section 744b of title 18, U.S.C., 1940 ed., except as to the specific mention in section 855 of said title of expense for maintenance and operation of camps. Hence a reference to operation was added in subsection (c) of this section.

Section 854 of title 18, U.S.C., 1940 ed., was added as a part of subsection (c).

Section 853 of title 18, U.S.C., 1940 ed., was added as subsection (d) of this section, although its retention may be unnecessary.

The phrase "the cost of which is borne exclusively by the United States" which followed the words "constructing or repairing roads" was omitted as inconsistent with the later phrase "constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated from the Treasury of the United States."

The provision for transfer of prisoners was omitted as duplicitous of a similar provision in section 4082 of this title.

Other changes of phraseology were made.

Cross References

Transfer of inmates, see section 4082 of this title.

§ 4126. Prison Industries Fund; use and settlement of accounts

All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the General Accounting Office.

All valid claims and obligations payable out of said fund shall be assumed by the corporation.

The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the corporation, as operating capital in performing the duties imposed by this chapter; in the repair, alteration, erection and maintenance of industrial buildings and equipment; in the vocational training of inmates without regard to their industrial or other assignments; in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act.

Accounts of all receipts and disbursements of the corporation shall be rendered to the General Accounting Office for settlement and adjustment, as required by the Comptroller General.

Such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

(June 25, 1948, ch. 645, 62 Stat. 852; May 24, 1949, ch. 139, § 64, 63 Stat. 99; Sept. 26, 1961, Pub. L. 87-317, 75 Stat. 681.)

HISTORICAL AND REVISION NOTES

1949 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744d, 744e, 744f, 744*l* (May 27, 1930, ch. 340, §§ 4–6, 46 Stat. 391, 392; June 23, 1934, ch. 736, § 4, 48 Stat. 1211).

This section is a restatement of section 744*l* of title 18, U.S.C., 1940 ed., with which sections 744d and 744f and the first sentence of section 744e of title 18, U.S.C., 1940 ed., are consolidated, in view of the fact that those provisions have been superseded by section 744*l* of title 18, U.S.C., 1940 ed., in connection with other provisions of the act of June 23, 1934, ch. 736, 48 Stat. 1211.

The first sentence of section 744*l* of title 18, U.S.C., 1940 ed., authorizing replacement of the prison industries working capital fund by the prison industries fund was omitted, as executed. That provision superseded section 744d of title 18, U.S.C., 1940 ed., which authorized creation of the prison industries working capital fund and the first sentence of section 744e of title 18, U.S.C., 1940 ed., directing that certain funds should be credited to the consolidated prison industries working capital fund.

The phrase "or received from the sale of the products or by-products of such Industries, or for the services of Federal prisoners," was inserted to make the first paragraph of this section complete, and required the Federal Prison Industries to account for all moneys under its control.

The words "in the repair, alteration, erection and maintenance of industrial buildings and equipment" and "under rules and regulations promulgated by the Attorney General in paying compensation to inmates employed in any industry, or performing outstanding services in industrial operations" were inserted in part to conform to administrative construction, and in part to provide greater flexibility in the operation of Prison Industries. Much friction was caused by the inability of Prison Industries to compensate inmates whose services in operating the utilities of the institution were most necessary but which were uncompensated while those prisoners who worked in the Industries received compensation. This inequitable situation is corrected by the revised section.

The words "in performing the duties imposed by this chapter" were substitued for the words "for the purposes enumerated in sections 744a–744h of this title," since the provisions with regard to prison industries now appear in this chapter. The general provisions as to use of the fund supersede the more specific provisions of section 744f of said title (enacted earlier).

A reference to the Federal Employees' Compensation Act as appeared in the 1934 act was substituted for the reference to specific sections of title 5. The word "law" was substituted for the reference to sections in title 31 since translation of the reference in the 1934 act was not practicable.

Remaining provisions of said section 744e of title 18, U.S.C., 1940 ed., relating to authorization of appropriations, were omitted as unnecessary.

Other changes in phraseology were made.

1949 ACT

This section [section 64] incorporates in section 4126 of title 18, U.S.C., provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4122 of such title by another section of this bill.

REFERENCES IN TEXT

The Federal Employees' Compensation Act, referred to in text, which is act Sept. 7, 1916, ch. 458, 39 Stat. 742, was repealed and the provisions thereof reenacted as subchapter I of chapter 81 of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1961—Pub. L. 87-317 authorized compensation for injuries to inmates incurred while working in connection with the maintenance or operation of the institution where confined.

1949—Act May 24, 1949, inserted in the third par. "in the vocational training of inmates without regard to their industrial or other assignments;" immediately following the second semicolon.

CROSS REFERENCES

Financial control of Corporation, see section 841 et seq. of Title 31, Money and Finance.

General Accounting Office; creation, powers, duties, etc., see section 41 et seq. of Title 31.

§ 4127. Prison Industries report to Congress

The board of directors of Federal Prison Industries shall make annual reports to Congress on the conduct of the business of the corporation and on the condition of its funds.

(June 25, 1948, ch. 645, 62 Stat. 852.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744m (June 23, 1934, ch. 736, § 5, 48 Stat. 1212).

Words "of Federal Prison Industries" were inserted after "board of directors".

Minor changes were made in phraseology.

CROSS REFERENCES

Reports by Comptroller General to Congress on audit of Government Corporations, see section 851 of Title 31, Money and Finance.

§ 4128. Enforcement by Attorney General

In the event of any failure of Federal Prison Industries to act, the Attorney General shall not be limited in carrying out the duties conferred upon him by law.

(June 25, 1948, ch. 645, 62 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744n (June 23, 1934, ch. 736, § 6, 48 Stat. 1212).

Phrase relating to section being "supplemental" to sections 744i-744h of title 18, U.S.C., 1940 ed., is omitted as unnecessary.

Retention of remainder of section is essential to insure authority of Attorney General to require performance of duties of Prison Industries. (See sections 4001 and 4003 of this title.) This is also consistent with Reorganization Plan No. II, § 3(a), transferring the corporation to the Department of Justice "under the general direction and supervision of the Attorney General". (See section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

Words "Federal Prison Industries" were substituted for "the corporation".

CHAPTER 309—GOOD TIME ALLOWANCES

Sec.
4161. Computation generally.
4162. Industrial good time.
4163. Discharge.
4164. Released prisoner as parolee.
4165. Forfeiture for offense.
4166. Restoration of forfeited commutation.

§ 4161. Computation generally

Each prisoner convicted of an offense against the United States and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:

Five days for each month, if the sentence is not less than six months and not more than one year.

Six days for each month, if the sentence is more than one year and less than three years.

Seven days for each month, if the sentence is not less than three years and less than five years.

Eight days for each month, if the sentence is not less than five years and less than ten years.

Ten days for each month, if the sentence is ten years or more.

When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed.

(June 25, 1948, ch. 645, 62 Stat. 853; Sept. 14, 1959, Pub. L. 86-259, 73 Stat. 546.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 710, 710a (June 21, 1902, ch. 1140, § 1, 32 Stat. 397; June 29, 1932, ch. 310, § 2, 47 Stat. 381).

This section consolidates sections 710 and 710a of title 18, U.S.C., 1940 ed., with changes of substance and phraseology. The language of said section 710a making the good time allowance coincide with the beginning date of the sentence instead of arrival at the institution was adopted for several reasons: (1) This provision is now 12 years old and is controlling on all sentences imposed since July 29, 1932, which means all sentences except those for life or in excess of 15 years; (2) the very small additional allowances which will accrue to these older prisoners are insignificant in comparison with the benefits resulting from a single system of computation.

Words "penal or correctional institution" were substituted for "penitentiary or jail" for clarity and completeness, on recommendation of the Department of Justice.

Word "consecutive" was inserted before "sentences," in final paragraph, for clarity.

Words "to be credited as earned, and computed monthly as follows" were inserted in the first paragraph to clarify the language and permit the Bureau of Prisons to credit good time only as it is earned, and to reverse an administrative practice which heretofore has credited to the inmate upon his entry into the institution all the good time which would be earned throughout his entire sentence. Upon misconduct requiring forfeiture of good time allowance the prisoner suffered the loss of both earned and unearned good time. Consequently he had no incentive to good behavior. The Bureau of Prisons strongly recommended the change made in this revised section.

AMENDMENTS

1959—Pub. L. 86-259 eliminated the words "to be credited as earned and computed monthly" preceding the words "as follows" at the end of the first paragraph.

CROSS REFERENCES

Effective date of sentence of imprisonment, see section 3568 of this title.

Forfeiture of good time allowance for offense, see section 4165 of this title.

§ 4162. Industrial good time

A prisoner may, in the discretion of the Attorney General, be allowed a deduction from his sentence of not to exceed three days for each month of actual employment in an industry or camp for the first year or any part thereof, and not to exceed five days for each month of any succeeding year or part thereof.

In the discretion of the Attorney General such allowance may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

Such allowance shall be in addition to commutation of time for good conduct, and under the same terms and conditions and without regard to length of sentence.

(June 25, 1948, ch. 645, 62 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744h (May 27, 1930, ch. 340, § 8, 46 Stat. 392).

Words "authority of sections 744b and 744c" were omitted. When this section was enacted those sections were the only general sections providing for camps and industries. However section 744k of title 18, U.S.C., 1940 ed., now authorizes establishment of prison industries. There appears to have been no

intent to grant industrial good time to prisoners in one industry and deny it to prisoners engaged in an industry set up under another section. (See ch. 307 of this title.)

Words "providing for commutation of sentences of United States prisoners for good conduct," at beginning of section, were omitted as unnecessary.

The second paragraph is new. It was added for the same reasons for which compensation is provided for similar service by section 4126 of this title and explained in the reviser's note thereto, which see.

Changes were made in phraseology and arrangement.

CROSS REFERENCES

Forfeiture of good time allowance for offense, see section 4165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 42.

§ 4163. Discharge

Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper. If such release date falls upon a Saturday, a Sunday, or on a Monday which is a legal holiday at the place of confinement, the prisoner may be released at the discretion of the warden or keeper on the preceding Friday. If such release date falls on a holiday which falls other than on a Saturday, Sunday, or Monday, the prisoner may be released at the discretion of the warden or keeper on the day preceding the holiday.

(June 25, 1948, ch. 645, 62 Stat. 853; Sept. 19, 1962, Pub. L. 87-665, 76 Stat. 552.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 713 (R.S. §§ 5543, 5544; Mar. 3, 1875, ch. 145, § 1, 18 Stat. 479; Mar. 3, 1891, ch. 529, § 8, 26 Stat. 840).

The reference to section 710 of title 18, U.S.C., 1940 ed., which section is now incorporated in section 4161 of this title, was not referred to in act March 3, 1875, and was omitted.

Last sentence of said section 713 was omitted and incorporated in section 4165 of this title.

Changes were made in phraseology.

AMENDMENTS

1962—Pub. L. 87-665 authorized the warden or keeper to release a prisoner on the workday preceding his release date if such date falls on a Saturday, Sunday, or holiday.

§ 4164. Released prisoner as parolee

A prisoner having served his term or terms less good-time deductions shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he was sentenced less one hundred and eighty days.

This section shall not prevent delivery of a prisoner to the authorities of any State otherwise entitled to his custody.

(June 25, 1948, ch. 645, 62 Stat. 853; June 29, 1951, ch. 176, 65 Stat. 98.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 716b (June 29, 1932, ch. 310, § 4, 47 Stat. 381).

Minor changes were made in phraseology.

AMENDMENTS

1951—Act June 29, 1951, provided that a prisoner who has served his sentence less good time deductions, shall be released unconditionally if there remain less than 180 days to serve, and if there remains a greater period to serve, the prisoner will be treated upon release as if he were on parole until the expiration of his maximum term or terms, less 180 days.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4201, 4205, 4210 of this title.

§ 4165. Forfeiture for offense

If during the term of imprisonment a prisoner commits any offense or violates the rules of the institution, all or any part of his earned good time may be forfeited.

(June 25, 1948, ch. 645, 62 Stat. 854.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 713 (R.S. §§ 5543, 5544; Mar. 3, 1875, ch. 145, § 1, 18 Stat. 479; Mar. 3, 1891, ch. 529, § 8, 26 Stat. 840).

First sentence of said section 713 of title 18, U.S.C., 1940 ed., is incorporated in section 4163 of this title.

Section was rewritten. The words "or violates the rules of the institution" and "all or any part of his earned good time" are new and are inserted in lieu of the mandatory requirement for forfeiture of good time upon conviction for an offense committed during imprisonment. The section as revised is more flexible and will promote better administration without working any undesirable change of substance.

§ 4166. Restoration of forfeited commutation

The Attorney General may restore any forfeited or lost good time or such portion thereof as he deems proper upon recommendation of the Director of the Bureau of Prisons.

(June 25, 1948, ch. 645, 62 Stat. 854.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 711 (June 21, 1902, ch. 1140, § 2, 32 Stat. 397).

The words "of the Director of the Bureau of Prisons" were substituted for the words "and evidence submitted to him by the warden in charge" without change of substance. The requirement that restoration in the case of federal prisoners confined in state and territorial institutions shall be in accordance with the rules of such institution were omitted as unnecessary and in any event not applicable in any case in which transfer may be indicated.

Changes were made in phraseology and arrangement.

CHAPTER 311—PAROLE

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AMENDMENTS

1976—Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219, enacted items 4201 to 4218. Former items 4201 to 4210, which set forth "Board of Parole; members" in item 4201, "Prisoners eligible" in item 4202, "Application and release; terms and conditions" in item 4203, "Aliens" in item 4204, "Retaking parole violator under warrant; time to serve undiminished" in item 4205, "Officer executing warrant to retake parole violator" in item 4206, "Revocation upon retaking parolee" in item 4207, "Fixing eligibility for parole at time of sentencing" in item 4208, "Young adult offenders" in item 4209, and "Warrants to retake Canal Zone parole violators" in item 4210, were struck out.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5005 of this title.

§ 4201. Definitions

As used in this chapter—

(1) "Commission" means the United States Parole Commission;

(2) "Commissioner" means any member of the United States Parole Commission;

(3) "Director" means the Director of the Bureau of Prisons;

(4) "Eligible prisoner" means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

(5) "Parolee" means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205(f); and

(6) "Rules and regulations" means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219.)

PRIOR PROVISIONS

A prior section 4201, acts June 25, 1948, ch. 645, 62 Stat. 854; Sept. 30, 1950, ch. 1115, § 1, 64 Stat. 1085; Sept. 6, 1958, Pub. L. 85-928, 72 Stat. 1783; Oct. 4, 1961, Pub. L. 87-367, title III, § 302(b)(1), (a), 75 Stat. 793, providing for the creation of, members to, and term of office of the Board of Parole, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233.

EFFECTIVE DATE

Section 16(b) of Pub. L. 94-233 provided that: "This Act [see Short Title note below] shall take effect sixty days after the date of enactment [Mar. 15, 1976], except that the provisions of section 4208(h) of this Act [section 4208(h) of this title] shall take effect one hundred twenty days after the date of enactment [Mar. 15, 1976]."

SHORT TITLE

Section 1 of Pub. L. 94-233 provided: "That this Act [enacting sections 4201 to 4218 of this title, amending sections 3655, 5005, 5006, 5010, 5014 to 5021, and 5041 of this title, repealing sections 4201 to 4210 and 5007 to 5009 of this title, and enacting provisions set out as notes under this section and section 4202 of this title] may be cited as the 'Parole Commission and Reorganization Act'."

TERMINATION OF OLD BOARD OF PAROLE

Section 3(a) of act Sept. 30, 1950, ch. 1115, 64 Stat. 1085, provided that when a majority of the members of the Board of Parole appointed under former section 4201, as amended by act Sept. 30, 1950, enterred upon their duties, the Board of Parole, established by this section prior to such amendment, was to cease to exist.

§ 4202. Parole Commission created

There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the Commissioners one to serve as Chairman. The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a Commissioner, the Commissioner shall continue to act until a successor has been appointed and qualified, except that no Commissioner may serve in excess of twelve years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219.)

PRIOR PROVISIONS

A prior section 4202, acts June 25, 1948, ch. 645, 62 stat. 854; July 31, 1951, ch. 277, 65 Stat. 150, providing for the eligibility of prisoners for parole, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233.

BOARD OF PAROLE: REVIEW OF SENTENCES

Pub. L. 89-793, title V, § 502, Nov. 8, 1966, 80 Stat. 1449, provided that: "The Board of Parole [now the United States Parole Commission] is hereby directed to review the sentence of any prisoner who, before the enactment of this Act [Nov. 8, 1966], was made ineligible for parole by [former] section 7237(d) of the Internal Revenue Code of 1954, as amended [section 7237(d) of Title 26, Internal Revenue] and who was convicted of a violation of a law relating to marihuana. After conducting such review the Board of Parole may authorize the release of such prisoner on parole pursuant to [former] section 4202 of Title 18, United States Code. Action taken by the Board of Parole under this section shall not cause any prisoner to serve a longer term than would be served under his original sentence."

Provision effective three months after Nov. 8, 1966, and applicable to any case pending in any court of the United States in which sentence has not yet been imposed as of such effective date, see section 605 of Pub. L. 89-793, set out as a note under section 3401 of Title 42, The Public Health and Welfare.

TRANSFER OF PERSONNEL, LIABILITIES, CONTRACTS, PROPERTY, AND RECORDS TO THE UNITED STATES PAROLE COMMISSION

Section 16(a) of Pub. L. 94-233 provided that: "There are hereby transferred to the Chairman of the United States Parole Commission, all personnel, liabilities, contracts, property and records as are employed, held, used, arising from, available or to be made available of the United States Board of Parole with respect to all functions, powers, and duties transferred by this Act [See Short Title note set out under section 4201 of this title] to the United States Parole Commission."

TRANSITION OF OFFICE

Section 16(c) of Pub. L. 94-233 provided that: "Each person holding office as a member of the United States Board of Parole on the day before the effective date of the Parole Commission and Reorganization Act [See Effective Date note set out under section 4201 of this title] shall be a Commissioner whose term as such shall expire on the date of the expiration of the term for which such person was appointed as a member of the Board of Parole."

SERVICE AS MEMBER OF UNITED STATES BOARD OF PAROLE NOT TO CONSTITUTE SERVICE AS A COMMISSIONER

Section 16(d) of Pub. L. 94-233 provided that: "For the purpose of section 4202 of title 18, United States Code, service by an individual as a member of the United States Board of Parole shall not constitute service as a Commissioner."

REFERENCES TO UNITED STATES PAROLE BOARD

Section 12 of Pub. L. 94-233 provided that: "Whenever in any of the laws of the United States or the District of Columbia the term 'United States Parole Board', or any other term referring thereto, is used, such term or terms, on and after the date of the effective date of this Act [See Effective Date note set out under section 4201 of this title], shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act [See Short Title note set out under section 4201 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 848.

§ 4203. Powers and duties of the Commission

(a) The Commission shall meet at least quarterly, and by majority vote shall—

(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

(1) grant or deny an application or recommendation to parole any eligible prisoner;

(2) impose reasonable conditions on an order granting parole;

(3) modify or revoke an order paroling any eligible prisoner; and

(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations, or agencies shall bear excessive caseloads.

(c) The Commission, by majority vote, and pursuant to rules and regulations—

(1) may delegate to any Commissioner or commissioners powers enumerated in subsection (b) of this section;

(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

(3) may delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

(4) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each Commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 220.)

PRIOR PROVISIONS

A prior section 4203, acts June 25, 1948, ch. 645, 62 Stat. 854; Oct. 22, 1970, Pub. L. 91-492, § 2, 84 Stat. 1090; May 11, 1972, Pub. L. 92-293, § 2, 86 Stat. 136, providing for the application and release of parolees and the terms and conditions of such release, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4201, 4204, 4206, 4218, 5005 of this title.

§ 4204. Powers and duties of the Chairman

(a) The Chairman shall—

(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

(A) the appointment of any hearing examiner shall be subject to approval of the

Commission within the first year of such hearing examiner's employment; and

(B) regional Commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

(5) designate three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one Commissioner to serve as regional Commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President, or his designee;

(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

(b) The Chairman shall have the power to—

(1) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b));

(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

(6) publish data concerning the parole process;

(7) devise and conduct, in various geographical locations, seminars, workshops and training programs providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local, and private agencies with their consent.

(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 221.)

PRIOR PROVISIONS

A prior section 4204, act June 25, 1948, ch. 645, 62 Stat. 854, providing for the parole of aliens, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233. See section 4212 of this title.

EX. ORD. NO. 11919. DELEGATION OF PRESIDENTIAL AUTHORITY TO CONCUR IN DESIGNATIONS OF COMMISSIONERS

Ex. Ord. No. 11919, June 9, 1976, 41 F.R. 23663, provided:

By virtue of the authority vested in me by section 301 of title 3, United States Code, and section 4204(a)(5) of title 18, United States Code, as enacted by the Parole Commission and Reorganization Act (Public Law 94-233), and as President of the United States of America, it is hereby ordered that the Attorney General shall serve as the President's designee for purposes of concurring in designations of Commissioners of the United States Parole Commission to serve on the National Appeals Board, as vice chairman of the Commission, and as regional Commissioner.

GERALD R. FORD.

§ 4205. Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in sub-

section (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 222.)

PRIOR PROVISIONS

A prior section 4205, act June 25, 1948, ch. 645, 62 Stat. 854, providing for the retaking under warrant of parole violators, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233. See section 4213 of this title.

APPLICABLE AREAS AND OFFENSES

Section 6 of Pub. L. 85-752, Aug. 25, 1958, 72 Stat. 847, as amended by Pub. L. 86-70, § 17(b), June 25, 1959, 73 Stat. 144; Pub. L. 86-624, § 13(c), July 12, 1960, 74 Stat. 413, provided that: "Sections 3 and 4 of this Act [adding former sections 4208 and 4209 of this title, which were the predecessor sections for this section and section 4216 of this title as added by Pub. L. 94-233] shall apply in the States of the United States, and in the District of Columbia so far as they relate to persons charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia."

MANDATORY PENALTIES

Section 7 of Pub. L. 85-752, Aug. 25, 1958, 72 Stat. 847, provided that: "This Act [adding section 334 of Title 28, Judiciary and Judicial Procedure, and former sections 4208 and 4209 of this title, which were the predecessor sections for this section and section 4216 of this title as added by Pub. L. 94-233] does not apply to any offense for which there is provided a mandatory penalty."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4201, 4208 of this title.

§ 4206. Parole determination criteria

(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) that release would not jeopardize the public welfare;

subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing: *Provided,* That the prisoner is furnished written notice stating with particularity the reasons

for its determination, including a summary of the information relied upon.

(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: *Provided, however,* That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 223.)

PRIOR PROVISIONS

A prior section 4206, act June 25, 1948, ch. 645, 62 Stat. 855, providing for the authority of Federal officers of penal or correctional institutions to execute parole violation warrants, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4215, 5017, 5041 of this title.

§ 4207. Information considered

In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

(5) reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 224.)

PRIOR PROVISIONS

A prior section 4207, act June 25, 1948, ch. 645, 62 Stat. 855, providing for an appearance before the Board of Parole for parole violators before termination or modification of parole, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 92-233. See section 4214 of this title.

§ 4208. Parole determination proceeding; time

(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b)(1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b)(2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a Federal institution, as the case may be. An eligible prisoner may knowingly and intelligently waive any proceeding.

(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

(c) Subparagraph (2) of subsection (b) shall not apply to—

(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

(d)(1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and the Commissioners or examiners conducting the

proceeding at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 224.)

PRIOR PROVISIONS

A prior section 4208, added Pub. L. 85-752, § 3, Aug. 25, 1958, 72 Stat. 845, providing for the fixing of eligibility for parole by court at time of sentencing, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233.

EFFECTIVE DATE

Section effective on the sixtieth day following Mar. 15, 1976, except that subsec. (h) is effective on the one hundred and twentieth day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as a note under section 4201 of this title.

§ 4209. Conditions of parole

(a) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

(1) the nature and circumstances of the offense; and

(2) the history and characteristics of the parolee;

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

(c) Release on parole or release as if on parole may as a condition of such release require—

(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole;

(2) a parolee, who is an addict within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 for all or part of the period of parole.

A parolee residing in a residential community treatment center pursuant to subparagraph (1) or (2) of this subsection, may be required to pay such costs incident to residence as the Commission deems appropriate.

(d)(1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a United States probation officer supervising a parolee: *Provided,* That the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten-day period, the Commission shall have twenty-one days, exclusive of holidays, to act upon such motion or application.

(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 225.)

REFERENCES IN TEXT

Section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), referred to in subsec. (c)(2), is classified to section 201(q) of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 4209, added Pub. L. 85-752, § 4, Aug. 25, 1958, 72 Stat. 846, providing for treatment of a defendant as a young adult offender, was repealed by section 2 of Pub. L. 94-233 as a part of the general revision of this chapter by Pub. L. 94-233. See section 4216 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4213, 4215 of this title.

§ 4210. Jurisdiction of Commission

(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that—

(1) such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

(2) in the case of a parolee who has been convicted of a Federal, State, or local crime committed subsequent to his release on parole, and such crime is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214(b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

(f) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 226.)

PRIOR PROVISIONS

A prior section 4210, added Pub. L. 87-845, § 4(a), Oct. 18, 1962, 76A Stat. 698, providing for authorization of Federal officers of penal or correctional institutions to execute a Canal Zone parole violation warrant and to hold the parolee for return to the Canal Zone, was repealed by section 2 of Pub. L. 94-233 as part of the general revision of this chapter by Pub. L. 94-233. See section 4217 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4211 of this title.

§ 4211. Early termination of parole

(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210.

(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(c)(1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engaged in conduct violating any criminal law.

(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

(3) In calculating the five-year period referred to in subparagraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 227.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4210, 4215 of this title.

§ 4212. Aliens

When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 227.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4204 of this title, prior to the repeal of such section and the general revision of this chapter by Pub. L. 94-233.

§ 4213. Summons to appear or warrant for retaking of parolee

(a) If any parolee is alleged to have violated his parole, the Commission may—

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 227.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4205 of this title, prior to the repeal of such section and the general revision of this chapter by Pub. L. 94-233.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4214 of this title.

§ 4214. Revocation of parole

(a)(1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

(i) continuation of revocation proceedings is not warranted; or

(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

(iii) the parolee is not likely to fail to appear for further proceedings; and

(iv) the parolee does not constitute a danger to himself or others.

(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

(b)(1) Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such a crime and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section to assist him in the preparation of such application.

(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section.

(3) Following the disposition review, the Commission may:

(A) let the detainer stand; or

(B) withdraw the detainer.

(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a)(1)(A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a)(2)(B) of this section.

(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

(1) restore the parolee to supervision;

(2) reprimand the parolee;

(3) modify the parolee's conditions of the parole;

(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 228.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4207 of this title, prior to the repeal of such section and the general revision of this chapter by Pub. L. 94-233.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4203, 4209, 4210, 4211, 4213, 4215 of this title.

§ 4215. Reconsideration and appeal

(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211(c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within thirty days to reaffirm, modify, or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 230.)

§ 4216. Young adult offenders

In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 230.)

REFERENCES IN TEXT

The Federal Youth Corrections Act, referred to in text, is act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, which is classified generally to chapter 402 (§ 5005 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4209 of this title, prior to the repeal of such section and the general revision of this chapter by Pub. L. 94-233.

APPLICABLE AREAS AND OFFENSES

Section 6 of Pub. L. 85-752, Aug. 25, 1958, 72 Stat. 847, as amended by Pub. L. 86-70, § 17(b), June 25, 1959, 73 Stat. 144; Pub. L. 86-624, § 13(c), July 12, 1960, 74 Stat. 413, provided that: "Sections 3 and 4 of this Act [adding former sections 4208 and 4209 of this title, which were the predecessor sections for this section and section 4205 of this title as added by Pub. L. 94-233] shall apply in the States of the United States, and in the District of Columbia, so far as they relate to persons charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia."

MANDATORY PENALTIES

Section 7 of Pub. L. 85-752, Aug. 25, 1958, 72 Stat. 847, provided that: "This Act [adding section 334 of Title 28, Judiciary and Judicial Procedure, and former sections 4208 and 4209 of this title, which were the predecessor sections for this section and section 4205 of this title as added by Pub. L. 94-233] does not apply to any offense for which there is provided a mandatory penalty."

§ 4217. Warrants to retake Canal Zone parole violators

An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 231.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4210 of this title, prior to the repeal of such section and the general revision of this chapter by Pub. L. 94-233.

§ 4218. Applicability of Administrative Procedure Act

(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557, the Commission is an "agency" as defined in such chapter.

(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rulemaking, shall be deemed not to include the phrase "general statements of policy".

(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

(d) Actions of the Commission pursuant to paragraphs (1), (2), and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.

(Added Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 231.)

CHAPTER 313—MENTAL DEFECTIVES

Sec.
4241. Examination and transfer to hospital.
4242. Retransfer upon recovery.
4243. Delivery to state authorities on expiration of sentence.
4244. Mental incompetency after arrest and before trial.
4245. Mental incompetency undisclosed at trial.
4246. Procedure upon finding of mental incompetency.
4247. Alternate procedure on expiration of sentence.
4248. Termination of custody by release or transfer.

AMENDMENTS

1951—Act Oct. 31, 1951, ch. 655, § 33, 65 Stat. 723, inserted "on expiration of sentence" in item 4243.

1949—Act Sept. 7, 1949, ch. 535, § 2, 63 Stat. 688, added items 4244-4248.

§ 4241. Examination and transfer to hospital

A board of examiners for each Federal penal and correctional institution shall consist of (1) a medical officer appointed by the warden or superintendent of the institution; (2) a medical officer appointed by the Attorney General; and (3) a competent expert in mental diseases appointed by the Surgeon General of the United States Public Health Service.

Such board shall examine any inmate of the institution alleged to be insane or of unsound mind or otherwise defective and report their findings and the facts on which they are based to the Attorney General.

The Attorney General, upon receiving such report, may direct the warden or superintendent or other official having custody of the prisoner to cause such prisoner to be removed to the United States hospital for defective delinquents or to any other institution authorized by law to receive insane persons charged with or convicted of offenses against the United States, there to be kept until, in the judgment of the superintendent of said hospital, the prisoner shall be restored to sanity or health or until the maximum sentence, without deduction for good time or commutation of sentence, shall have been served.

(June 25, 1948, ch. 645, 62 Stat. 855.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 876 (May 13, 1930, ch. 254, § 6, 46 Stat. 271).

Changes were made in phraseology and surplusage omitted.

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, of 1966, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Alternate procedure on expiration of sentence, see section 4247 of this title.

Mental incompetency undisclosed at trial, see section 4245 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4245, 4247 of this title.

§ 4242. Retransfer upon recovery

An inmate of the United States hospital for defective delinquents whose sanity or health is restored prior to the expiration of his sentence may be retransferred to any penal or correctional institution designated by the Attorney General, there to remain pursuant to the original sentence, computing the time of his detention or confinement in said hospital as part of the term of his imprisonment.

(June 25, 1948, ch. 645, 62 Stat. 855.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 877 (May 13, 1930, ch. 254, § 7, 46 Stat. 272).

Minor change was made in phraseology.

§ 4243. Delivery to State authorities on expiration of sentence

The superintendent of the United States hospital for defective delinquents shall notify the proper authorities of the State, Territory, District, or Possession where any insane prisoner has his legal residence, or, if this cannot be ascertained, the proper authorities of the State,

Territory, District, or Possession from which he was committed, of the date of expiration of sentence of any prisoner who, in the judgment of such superintendent, is still insane or a menace to the public. Such superintendent shall cause such prisoner to be delivered into the custody of the proper authorities of such State, Territory, District or Possession.

(June 25, 1948, ch. 645, 62 Stat. 855.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 878 (May 13, 1930, ch. 254, § 8, 46 Stat. 272).

Changes were made in translations and phraseology, and unnecessary words omitted.

§ 4244. Mental incompetency after arrest and before trial

Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686.)

USE OF APPROPRIATIONS

Section 3 of act Sept. 7, 1949, provided that: "The Attorney General may authorize the use of any unexpended balance of the appropriation for 'Support of United States prisoners' for carrying out the purposes of Title 18, United States Code, sections 4244 to 4248, inclusive, or in payment of any expenses incidental thereto and not provided for by other specific appropriations."

SEPARABILITY OF PROVISIONS

Section 4 of act Sept. 7, 1949, provided that: "If any provision of Title 18, United States Code, sections 4244 to 4248, inclusive, or the application thereof to any person or circumstance shall be held invalid, the remainder of the said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

CROSS REFERENCES

Mental incompetency undisclosed at trial, see section 4245 of this title.

Procedure upon finding of mental incompetency, see section 4246 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4245, 4246 of this title.

§ 4245. Mental incompetency undisclosed at trial

Whenever the Director of the Bureau of Prisons shall certify that a person convicted of an offense against the United States has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that there is probable cause to believe that such person was mentally incompetent at the time of his trial, provided the issue of mental competency was not raised and determined before or during said trial, the Attorney General shall transmit the report of the board of examiners and the certificate of the Director of the Bureau of Prisons to the clerk of the district court wherein the conviction was had. Whereupon the court shall hold a hearing to determine the mental competency of the accused in accordance with the provisions of section 4244 above, and with all the powers therein granted. In such hearing the certificate of the Director of the Bureau of Prisons shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial, the court shall vacate the judgment of conviction and grant a new trial.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686.)

CROSS REFERENCES

Procedure upon finding of mental incompetency, see section 4246 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3006A, 4246 of this title.

§ 4246. Procedure upon finding of mental incompetency

Whenever the trial court shall determine in accordance with sections 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the

commitment shall be governed by section 4248 as herein provided.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4248 of this title.

§ 4247. Alternate procedure on expiration of sentence

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examination by the prisoner or on behalf of the Government. At such hearing the court may in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686.)

CROSS REFERENCES

Procedure upon finding of mental incompetency, see section 4246 of this title.

Termination of custody by release or transfer, see section 4248 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4246, 4248 of this title.

§ 4248. Termination of custody by release or transfer

Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur. Whereupon the Attorney General or his authorized representative shall file with the court which made said commitment a certificate stating the termination of the commitment and the ground therefor: *Provided, however,* That nothing herein contained shall preclude a prisoner committed under the authority of section 4247 hereof from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus. The Attorney General or his authorized representative shall have authority at any time to transfer a prisoner committed to his custody under the authority of section 4246 or section 4247 hereof to the proper authorities of the State of his residence.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4246 of this title.

CHAPTER 314—NARCOTIC ADDICTS

Sec.
4251. Definitions
4252. Examination.
4253. Commitment.
4254. Conditional release.
4255. Supervision in the community.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 257.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 24-613 of the District of Columbia Code.

§ 4251. Definitions

As used in this chapter—

(a) "Addict" means any individual who habitually uses any narcotic drug as defined in section 102(16) of the Controlled Substances Act so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction.

(b) "Crime of violence" includes voluntary manslaughter, murder, rape, mayhem, kipnaping, robbery, burglary or housebreaking in the nighttime, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable as a felony, or an attempt or conspiracy to commit any of the foregoing offenses.

(c) "Treatment" includes confinement and treatment in an institution and under supervised aftercare in the community and includes, but is not limited to, medical, educational, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence, and his susceptibility to addiction.

(d) "Felony" includes any offense in violation of a law of the United States classified as a felony under section 1 of title 18 of the United States Code, and further includes any offense in violation of a law of any State, any possession or territory of the United States, the District of Columbia, the Canal Zone, or the Com-

monwealth of Puerto Rico, which at the time of the offense was classified as a felony by the law of the place where that offense was committed.

(e) "Conviction" and "convicted" mean the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, and do not include a final judgment which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

(f) "Eligible offender" means any individual who is convicted of an offense against the United States, but does not include—

(1) an offender who is convicted of a crime of violence.

(2) an offender who is convicted of unlawfully importing or selling or conspiring to import or sell a narcotic drug, unless the court determines that such sale was for the primary purpose of enabling the offender to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug.

(3) an offender against whom there is pending a prior charge of a felony which has not been finally determined or who is on probation or whose sentence following conviction on such a charge, including any time on parole or mandatory release, has not been fully served: *Provided*, That an offender on probation, parole, or mandatory release shall be included if the authority authorized to require his return to custody consents to his commitment.

(4) an offender who has been convicted of a felony on two or more prior occasions.

(5) an offender who has been committed under title I of the Narcotic Addict Rehabilitation Act of 1966, under this chapter, under the District of Columbia Code, or under any State proceeding because of narcotic addiction on three or more occasions.

(Added Pub. L. 89-793, title II, § 201, Nov. 8, 1966, 80 Stat. 1442, and amended Pub. L. 91-513, title III, § 1102(s), Oct. 27, 1970, 84 Stat. 1294; Pub. L. 92-420, § 3, Sept. 16, 1972, 86 Stat. 677.)

REFERENCES IN TEXT

Section 102(16) of the Controlled Substances Act, referred to in subsec. (a), is set out as section 802(16) of Title 21, Food and Drugs.

The Narcotic Addict Rehabilitation Act of 1966, referred to in subsec. (f)(5), is Pub. L. 89-793, titles I to IV, Nov. 8, 1966, 80 Stat. 1438. Title I of the Narcotic Addict Rehabilitation Act of 1966 is classified generally to chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 42, The Public Health and Welfare, and Tables volume.

AMENDMENTS

1972—Subsec. (c). Pub. L. 92-420 substituted "by eliminating his dependence on addicting drugs, or by controlling his dependence," for "by correcting his antisocial tendencies and ending his dependence on addicting drugs".

1970—Subsec. (a). Pub. L. 91-513 substituted "as defined in section 102(16) of the Controlled Substances Act" for "as defined in section 4731 of the Internal Revenue Code of 1954, as amended".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment of subsec. (c) by Pub. L. 92-420 applicable to cases pending in a district court of the United States in which an appearance has not been made prior to Sept. 16, 1972, see section 5 of Pub. L. 92-420, set out as an Effective Date of 1972 Amendment note under section 2901 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE

Chapter effective three months after Nov. 8, 1966, and applicable to any case pending in any court of the United States in which sentence has not yet been imposed as of such effective date, see section 605 of Pub. L. 89-793, title VI, Nov. 8, 1966, 80 Stat. 1450, set out as an Effective Date note under section 3401 of Title 42, The Public Health and Welfare.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a Savings Provision note under former section 171 of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3651, 4209 of this title.

§ 4252. Examination

If the court believes that an eligible offender is an addict, it may place him in the custody of the Attorney General for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment. The Attorney General shall report to the court within thirty days; or any additional period granted by the court, the results of such examination and make any recommendations he deems desirable. An offender shall receive full credit toward the service of his sentence for any time spent in custody for an examination.

(Added Pub. L. 89-793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4253 of this title.

§ 4253. Commitment

(a) Following the examination provided for in section 4252, if the court determines that an eligible offender is an addict and is likely to be rehabilitated through treatment, it shall commit him to the custody of the Attorney General for treatment under this chapter, except that no offender shall be committed under this chapter if the Attorney General certifies that adequate facilities or personnel for treatment are unavailable. Such commitment shall be for an indeterminate period of time not to exceed ten years, but in no event shall it exceed the maximum sentence that could otherwise have been imposed.

(b) If, following the examination provided for in section 4252, the court determines that an eligible offender is not an addict, or is an addict not likely to be rehabilitated through treatment, it shall impose such other sentence as may be authorized or required by law.

(Added Pub. L. 89-793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4254 of this title.

§ 4254. Conditional release

An offender committed under section 4253(a) may not be conditionally released until he has been treated for six months following such commitment in an institution maintained or approved by the Attorney General for treatment. The Attorney General may then or at any time thereafter report to the Board of Parole whether the offender should be conditionally released under supervision. After receipt of the Attorney General's report, and certification from the Surgeon General of the Public Health Service that the offender has made sufficient progress to warrant his conditional release under supervision, the Board may in its discretion order such a release. In determining suitability for release, the Board may make any investigation it deems necessary. If the Board does not conditionally release the offender, or if a conditional release is revoked, the Board may thereafter grant a release on receipt of a further report from the Attorney General.

(Added Pub. L. 89-793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443.)

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4255. Supervision in the community

An offender who has been conditionally released shall be under the jurisdiction of the Board as if on parole under the established rules of the Board and shall remain, while conditionally released, in the legal custody of the Attorney General. The Attorney General may contract with any appropriate public or private agency or any person for supervisory aftercare of a conditionally released offender. Upon receiving information that such an offender has violated his conditional release, the Board, or a member thereof, may issue and cause to be executed a warrant for his apprehension and return to custody. Upon return to custody, the offender shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board, after which the Board may revoke the order of conditional release.

(Added Pub. L. 89-793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3651, 4209 of this title.

CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

Sec.
4281. Discharge from prison.
4282. Arrested but unconvicted persons.
4283. Probation.
4284. Advances for rehabilitation.

AMENDMENTS

1952—Act May 15, 1952, ch. 289, § 3, 66 Stat. 73, added item 4284.

§ 4281. Discharge from prison

A person convicted under the laws of the United States shall, upon discharge from imprisonment, or release on parole, be furnished with transportation to the place of conviction or bona fide residence within the United States at the time of his commitment or to such place within the United States as may be authorized by the Attorney General.

He shall also be furnished with such suitable clothing as may be authorized by the Attorney General, and, in the discretion of the Attorney General, an amount of money not to exceed $100.

(June 25, 1948, ch. 645, 62 Stat. 856; Sept. 19, 1962, Pub. L. 87-672, 76 Stat. 557.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 721, 746 (Mar. 3, 1891, ch. 529, § 6, 26 Stat. 840; June 25, 1910, ch. 387, § 8, 36 Stat. 820; July 3, 1926, ch. 795, 44 Stat. 901).

This section represents a consolidation of sections 721 and 746 of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect consolidation.

Such phrases as "on indictment", "under sentence of the court", "paroled prisoner" and "on the discharge from any prison" were omitted in the process of revision.

The amount of a prisoner's clothing allowance, fixed by said section 746, was increased from $20 to $30 to conform to recent appropriation acts and the $5 allowance to persons released on parole under said section 721 was increased to the same figure in the interest of fair and uniform administration.

The qualification that the term of imprisonment shall have been six months or more was omitted as artificial and not conducive to good administration.

These changes were made after consultation with the Director of the Bureau of Prisons.

AMENDMENTS

1962—Pub. L. 87-672 increased from $30 to $100 the maximum amount of gratuity which Attorney General may furnish to prisoner upon discharge from imprisonment or release on parole.

§ 4282. Arrested but unconvicted persons

On the release from custody of a person arrested on a charge of violating any law of the United States or of the Territory of Alaska, but not indicted nor informed against, or indicted or informed against but not convicted, and not admitted to bail, or a person held as a material witness and unable to make bail, the court in its discretion may direct the United States marshal for the district wherein he is released, pursuant to regulations promulgated by the Attor-

ney General, to furnish the person so released with transportation and subsistence to the place of his arrest, or, at his election, to the place of his bona fide residence if such cost is not greater than to the place of arrest.

(June 25, 1948, ch. 645, 62 Stat. 856.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 746a (July 3, 1926, ch. 795, § 2, as added June 21, 1941, ch. 212, 55 Stat. 254).

The phrase "informed against" was inserted in two places in view of the fact that under the Federal Rules of Criminal Procedure the use of informations may be expected to increase. See Rule 7(b).

The section was extended to cover a person held as a material witness and unable to make bail. His predicament obviously calls for the relief afforded by the revised section.

Changes were made in phraseology and surplusage omitted.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 4283. Probation

A court of the United States when placing a defendant on probation, may direct the United States marshal to furnish the defendant with transportation to the place to which the defendant is required to proceed under the terms of his probation and, in addition, may also direct the marshal to furnish the defendant with an amount of money, not to exceed $30, for subsistence expense to his destination. In such event, such expenses shall be paid by the marshal.

(June 25, 1948, ch. 645, 62 Stat. 856.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 746b (July 3, 1926, ch. 795, § 3, as added June 21, 1941, ch. 212, 55 Stat. 254).

The sum "$30" was substituted for $20 to conform to section 4281 of this title.

Minor changes were made in phraseology.

§ 4284. Advances for rehabilitation

(a) The Attorney General, under such regulations as he prescribes, acting for himself or through such officers and employees as he designates, may use so much of the trust funds designated as "Commissary Funds, Federal Prisons" (31 U.S.C. 725s(22)), as may be surplus to other needs of the trust, to provide advances to prisoners at the time of their release, as an aid to their rehabilitation.

(b) An advance made hereunder shall in no instance exceed $150 except with the specific approval of the Attorney General, and shall in every case be secured by the personal note of the prisoner conditioned to make repayment monthly when employed, or otherwise possessed of funds, with interest at a rate not to exceed 6 per centum per annum and subject to an agreement on the part of the prisoner that the funds so advanced shall be expended only for the purposes designated in the loan agreement. Repayments of principal and interest shall be credited to the trust fund from which the advance was made. Any unpaid principal or interest on said note shall be considered as a debt due the United States.

(Added May 15, 1952, ch. 289, § 1, 66 Stat. 72.)

CHAPTER 317—INSTITUTIONS FOR WOMEN

Sec.
4321. Board of Advisers.

§ 4321. Board of Advisers

Four citizens of the United States of prominence and distinction, appointed by the President to serve without compensation, for terms of four years, together with the Attorney General of the United States, the Director of the Bureau of Prisons and the warden of the Federal Reformatory for Women, shall constitute a Board of Advisers of said Federal Reformatory for Women, which shall recommend ways and means for the discipline and training of the inmates, to fit them for suitable employment upon their parole or discharge.

Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the citizen whom he shall succeed.

(June 25, 1948, ch. 645, 62 Stat. 856.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 816 (June 7, 1924, ch. 287, § 7, 43 Stat. 474; May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The provisions relating to the appointment of the board in the first instance were omitted as executed.

"Warden" was substituted for "superintendent" and "Federal Reformatory for Women" for "United States Industrial Institution for Women" to conform to existing administrative usage.

Minor changes were made in translation, phraseology, and arrangement.

CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

Sec.
4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers.[1]
4352. Authority of Institute; report to President and Congress; time; records of recipients; access; scope of section.[1]
4353. Authorization of appropriations.[1]

AMENDMENTS

1974—Pub. L. 93-415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139, added chapter heading.

§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers[2]

(a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee,

[1] Section catchlines editorially inserted since sections were enacted without catchlines.

[2] Section catchline editorially inserted since section was enacted without a catchline.

the Administrator of the Law Enforcement Assistance Administration or his designee, Chairman of the United States Parole Board or his designee, the Director of the Federal Judicial Center or his designee, the Deputy Assistant Administrator for the National Institute for Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

(c) The remaining ten members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole.

(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the Institute with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

(Added Pub. L. 93-415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (f) and (h), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

The classification laws, referred to in subsec. (h), are classified generally to chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY BOARDS

Advisory Boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4352. Authority of Institute; report to President and Congress; time; records of recipients; access; scope of section[1]

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, and general units of local government, public and private agencies, educational institutions, or-

[1] Section catchline editorially inserted since section was enacted without a catchline.

ganizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5 of the United States Code.

(b) The Institute shall on or before the 31st day of December of each year submit an annual report for the preceding fiscal year to the President and to the Congress. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this title and may include such recommendations related to corrections as the Institute deems appropriate.

(c) Each recipient of assistance under this [1] shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) The provision of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

(Added Pub. L. 93-415, title V, § 521, Sept. 7, 1974, 88 Stat. 1140.)

§ 4353. Authorization of appropriations[2]

There is hereby authorized to be appropriated such funds as may be required to carry out the purposes of this chapter.

(Added Pub. L. 93-415, title V, § 521, Sept. 7, 1974, 88 Stat. 1141.)

PART IV—CORRECTION OF YOUTHFUL OFFENDERS

Chap.		Sec.
401.	General provisions	5001
402.	Federal Youth Corrections Act	5005
403.	Juvenile delinquency	5031

AMENDMENTS

1950—Act Sept. 30, 1950, ch. 1115, § 5(a), 64 Stat. 1090, added item 402.

CHAPTER 401—GENERAL PROVISIONS

Sec.
5001. Surrender to State authorities; expenses.
5002. Advisory Corrections Council.
5003. Custody of State offenders.

[1] So in original. Probably should be "this title".

[2] Section catchline editorially inserted since section was enacted without a catchline.

AMENDMENTS

1952—Act May 9, 1952, ch. 253, § 2, 66 Stat. 68, added item "5003".

1950—Act Sept. 30, 1950, ch. 1115, § 5(b), 64 Stat. 1090, added item "5002".

§ 5001. Surrender to State authorities; expenses

Whenever any person under twenty-one years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State or of the District of Columbia, and that it will be to the best interest of the United States and of the juvenile offender, the United States attorney of the district in which such person has been arrested may forego his prosecution and surrender him as herein provided.

The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver him into the custody of the proper authority thereof.

Before any person is conveyed from one State to another or from or to the District of Columbia under this section, he shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of such State or the District of Columbia, to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 3182 of this title.

The expense incident to the transportation of any such person, as herein authorized, shall be paid from the appropriation "Salaries, Fees, and Expenses, United States Marshals."

(June 25, 1948, ch. 645, 62 Stat. 857.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662a (June 11, 1932, ch. 243, 47 Stat. 301).

Language preceding "Whenever" was omitted as unnecessary, and "the District of Columbia" was inserted after "State".

Changes were made in phraseology and surplusage eliminated.

CROSS REFERENCES

Fugitives from State or Territory to State, District or Territory, see section 3182 of this title.

§ 5002. Advisory Corrections Council

There is hereby created an Advisory Corrections Council, composed of one United States circuit judge and two United States district judges designated from time to time by the Chief Justice of the United States, of one member, who shall be Chairman, designated by the Attorney General, and, ex officio, of the Chairman of the Board of Parole, the Chairman of the Youth Division, the Director of the Bureau of Prisons, and the Chief of Probation of the Administrative Office of the United States Courts. The Council shall hold stated meetings to consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of offenses against the United States. It shall also consider measures to promote the prevention of crime and delinquency, suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

(Added Sept. 30, 1950, ch. 1115, § 4, 64 Stat. 1090.)

TERMINATION OF ADVISORY COUNCIL

Advisory Councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5003. Custody of State offenders

(a) The Attorney General, when the Director shall certify that proper and adequate treatment facilities and personnel are available, is hereby authorized to contract with the proper officials of a State or Territory for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or Territory: *Provided*, That any such contract shall provide for reimbursing the United States in full for all costs or other expenses involved.

(b) Funds received under such contract may be deposited in the Treasury to the credit of the appropriation or appropriations from which the payments for such service were originally made.

(c) Unless otherwise specifically provided in the contract, a person committed to the Attorney General hereunder shall be subject to all the provisions of law and regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed.

(d) The term "State" as used in this section includes any State, territory, or possession of the United States, and the Canal Zone.

(Added May 9, 1952, ch. 253, § 1, 66 Stat. 68, and amended Oct. 19, 1965, Pub. L. 89-267, § 1, 79 Stat. 990.)

AMENDMENTS

1965—Subsec. (d). Pub. L. 89-267 added subsec. (d).

CHAPTER 402—FEDERAL YOUTH CORRECTIONS ACT

Sec.
5005. Youth correction decisions.
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[5007 to 5009. Repealed.]
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AMENDMENTS

1976—Pub. L. 94-233, § 10, Mar. 15, 1976, 90 Stat. 232, deleted items "5007. Duties of members; meetings.", "5008. Officers and employees.", and "5009. Rules of Division.", substituted "Youth correction decisions" for "Youth Correction Division" in item 5005, and substituted "Commission" for "Division" in item 5018.

1967—Pub. L. 90-226, title VIII, § 801(c), Dec. 27, 1967, 81 Stat. 741, substituted "Applicability to the District of Columbia" for "Applicability to District of Columbia prisoners" in item 5025.

1952—Act Apr. 8, 1952, ch. 163, § 4, 66 Stat. 46, added items 5025 and 5026.

1950—Act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1085, added chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4216 of this title.

§ 5005. Youth correction decisions

The Commission and, where appropriate, its authorized representatives as provided in section 4203(c), may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, and amended Mar. 15, 1976, Pub. L. 94-233, § 3, 90 Stat. 231.)

AMENDMENTS

1976—Pub. L. 94-233 in section catchline substituted "Youth correction decisions" for "Youth Correction Division" and substituted provisions relating to the authority of the Commission to make decisions with respect to committed youth offenders for provisions relating to members of the Youth Correction Division and the delegation of duties and responsibilities of the Chairman of the Youth Correction Division.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

[1] So in original. Does not conform to section catchline.

§ 5006. Definitions

As used in this chapter—

(a) "Commission" means the United States Parole Commission;

(b) "Bureau" means the Bureau of Prisons;

(c) "Director" means the Director of the Bureau of Prisons;

(d) "youth offender" means a person under the age of twenty-two years at the time of conviction;

(e) "committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

(f) "treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

(g) "conviction" means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, and amended Mar. 15, 1976, Pub. L. 94-233, § 4, 90 Stat. 231.)

AMENDMENTS

1976—Pub. L. 94-233 in par. (a) substituted definition of "Commission" for definition of "Board", in par. (b) substituted definition of "Bureau" for definition of "Division", in par. (c) substituted definition of "Director" for definition of "Bureau", in par. (d) substituted definition of "youth offender" for definition of "Director", in par. (e) substituted definition of "committed youth offender" for definition of "Youth offender", in par. (f) substituted definition of "treatment" for definition of "Committed youth offender", in par. (g) substituted definition of "conviction" for definition of "Treatment", and struck out par. (h).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

[§§ 5007 to 5009. Repealed Pub. L. 94-233, § 5, Mar. 15, 1976, 90 Stat. 231]

Section 5007, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, provided for meetings and duties of members of the Youth Correction Division.

Section 5008, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, provided for the appointment of officers and employees by the Attorney General.

Section 5009, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, provided for the adoption and promulgation of rules governing procedure by the Youth Correction Division.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5010. Sentence

(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(b) If the court shall find that a convicted person is a youth offender, and the offense is

punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-233 substituted "Commission" for "Division".

Subsec. (c). Pub. L. 94-233 substituted "Commission" for "Division" whenever appearing therein.

Subsec. (e). Pub. L. 94-233 substituted "Commission" for "Division".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

CROSS REFERENCES

Committed youth offender, defined, see section 5006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5006, 5017 of this title.

§ 5011. Treatment

Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087.)

§ 5012. Certificate as to availability of facilities

No youth offender shall be committed to the Attorney General under this chapter until the Director shall certify that proper and adequate treatment facilities and personnel have been provided.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087.)

§ 5013. Provision of facilities

The Director may contract with any appropriate public or private agency not under his control for the custody, care, subsistence, education, treatment, and training of committed youth offenders the cost of which may be paid from the appropriation for "Support of United States Prisoners".

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087.)

§ 5014. Classification studies and reports

The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, and amended July 17, 1970, Pub. L. 91-339, § 1, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94-233, § 6, 90 Stat. 231.)

AMENDMENTS

1976—Pub. L. 94-233 substituted requirement that submission of agency report of findings go to the Director and the Commission for requirement that report go to the Director and the Youth Correction Division, and substituted provision requiring a parole interview for a youth offender for provision requiring that at least one member of the Division, or an examiner designated by the Division, as soon as practicable after commitment, interview the youth offender, review all reports concerning him, and make such recommendations to the Director and to the Division as may be indicated.

1970—Pub. L. 91-339 provided for the designation by the Division of an examiner to interview the youth offender and to review the reports and to make recommendations.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5015. Powers of Director as to placement of youth offenders

(a) On receipt of the report and recommendations from the classification agency the Director may—

(1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or

(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

(b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-233 substituted "Commission" for "Division".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5016. Reports concerning offenders

The Director shall cause periodic examinations and reexaminations to be made of all committed youth offenders and shall report to the Commission as to each such offender as the Commission may require. United States probation officers and supervisory agents shall likewise report to the Commission respecting youth offenders under their supervision as the Commission may direct.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Pub. L. 94-233 substituted "Commission" for "Division" whenever appearing therein.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5017. Release of youth offenders

(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, §§ 7, 9, 90 Stat. 232.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-233, § 7, added provision requiring release to be in accordance with the provisions of section 4206 of this title, and substituted Commission for Division as agency authorized to release youth offenders and as recipient of report from Director.

Subsec. (b). Pub. L. 94-233, § 9, substituted "Commission" for "Division".

Subsec. (e). Pub. L. 94-233, § 9, substituted "Commission" for "Division".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5010 of this title.

§ 5018. Revocation of Commission orders

The Commission may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Pub. L. 94-233 substituted in section catchline "Commission" for "Division", and substituted "Commission" for "Division" in text.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5019. Supervision of released youth offenders

Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of United States probation officers, supervisory agents appointed by the Attorney General, and voluntary supervisory agents approved by the Commission. The Commission is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by regulations adopted by the Commission.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Pub. L. 94-233 substituted "Commission" for "Division" whenever appearing therein.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5020. Apprehension of released offenders

If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended July 17, 1970, Pub. L. 91-339, § 2, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94-233, § 8, 90 Stat. 232.)

AMENDMENTS

1976—Pub. L. 94-233 substituted Commission for Division as the agency authorized to return the youth offender to custody if it is of the opinion that further treatment is indicated, and substituted the requirement of a revocation hearing by the Commission for the requirement of an opportunity to appear before the Division, a member thereof, or an examiner designated by the Division.

1970—Pub. L. 91-339 gave youth offenders the opportunity to appear before an examiner designated by the Division.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5021. Certificate setting aside conviction

(a) Upon the unconditional discharge by the Commission of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect.

(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Oct. 3, 1961, Pub. L. 87-336, 75 Stat. 750; Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232.)

AMENDMENTS

1976—Subsec. (a), Pub. L. 94-233 substituted "Commission" for "Division" whenever appearing therein.

1961—Pub. L. 87-336 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5022. Applicable date

This chapter shall not apply to any offense committed before its enactment.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089.)

§ 5023. Relationship to Probation and Juvenile Delinquency Acts

(a) Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation or be construed in any wise to amend, repeal, or affect the provisions of chapter 231 of this title or the Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of the D. of C. Code), both relative to probation.

(b) Nothing in this chapter shall be construed in any wise to amend, repeal, or affect the provisions of chapter 403 of this title (the Federal Juvenile Delinquency Act), or limit the jurisdiction of the United States courts in the administration and enforcement of that chapter except that the powers as to parole of juvenile delinquents shall be exercised by the Division.

(c) Nothing in this chapter shall be construed in any wise to amend, repeal, or affect the provisions of the Juvenile Court Act of the District of Columbia (ch. 9, title 11, of the D. of C. Code).

(Added Sept. 30, 1950, ch. 1115, § 2 64 Stat. 1089, and amended Apr. 8, 1952, ch. 163, § 1, 66 Stat. 45.)

REFERENCES IN TEXT

Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of the D. of C. Code), referred to in subsec. (a), is not classified to this Code.

Juvenile Court Act of the District of Columbia (ch. 9, title 11, of the D. of C. Code), referred to in subsec. (c), is not classified to this Code.

AMENDMENTS

1952—Subsec. (a). Act Apr. 8, 1952, provided that nothing in this chapter was to affect chapter 1, title 24 of the District of Columbia Code.

Subsec. (c). Act Apr. 8, 1952, added subsec. (c).

§ 5024. Where applicable

This chapter shall apply in the States of the United States and in the District of Columbia.

(Added Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Apr. 8, 1952, ch. 163, § 2, 66 Stat. 45; June 25, 1959, Pub. L. 86-70, § 17(a), 73 Stat. 144; July 12, 1960, Pub. L. 86-624, § 13(b), 74 Stat. 413; Dec. 27, 1967, Pub. L. 90-226, title VIII, § 801(a), 81 Stat. 741.)

AMENDMENTS

1967—Pub. L. 90-226 substituted "and in the District of Columbia" for ", and to youth offenders convicted in the District of Columbia of offenses under any law of the United States not applicable exclusively to such District, and to other youth offenders convicted in the District to the extent authorized under section 5025" following "States of the United States".

1960—Pub. L. 86-624 substituted "This chapter shall apply in the States of the United States" for "This chapter shall apply in the continental United States including Alaska".

1959—Pub. L. 86-70 substituted "including Alaska" for "other than Alaska".

1952—Act Apr. 8, 1952, made the provisions of the chapter applicable to the District of Columbia with specified limitations.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 17(c) of Pub. L. 86-70 provided that: "Subsections (a) and (b) of this section [amending this section and section 6 of Pub. L. 85-752, set out as a note under section 4208 of this title] shall be effective on July 7, 1961, or on the date of the Executive order referred to in section 18 of the Act of July 7, 1958 (72 Stat. 339, 350) [set out as a note under section 81A of Title 28, Judiciary and Judicial Procedure], providing for the admission of the State of Alaska into the Union, whichever occurs first."

SEPARABILITY OF PROVISIONS

Section 1102 of Pub. L. 90-226 provided that: "If any provision of or any amendment made by this Act [which in part, amended this section and sections 4122 and 5025 of this title and enacted provisions set out as a note under section 203 of Title 1, General Provisions] or the application thereof to any person or circumstances is held invlaid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby."

§ 5025. Applicability to the District of Columbia

(a) The Commissioner of the District of Columbia is authorized to provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted of violations of any law of the United States applicable exclusively to the District of Columbia or to contract with the Director of the Bureau of Prisons for their treatment and rehabilitation, the cost of which may be paid from the appropriation for the District of Columbia.

(b) When facilities of the District of Columbia are utilized by the Attorney General for the treatment and rehabilitation of youth offenders convicted of violations of laws of the United States not applicable exclusively to the District of Columbia, the cost shall be paid from the "Appropriation for Support of United States Prisoners".

(c) All youth offenders committed to institutions of the District of Columbia shall be under the supervision of the Commissioner of the District of Columbia, and he shall provide for their maintenance, treatment, rehabilitation, supervision, conditional release, and discharge in conformity with the objectives of this chapter.

(Added Apr. 8, 1952, ch. 163, § 3(a), 66 Stat. 46, and amended Dec. 27, 1967, Pub. L. 90-226, title VIII, § 801(b), 81 Stat. 741.)

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-226 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, struck out provision that, whenever undergoing treatment, committed youth offenders were subject to all the provisions of this chapter as though convicted of offenses not applicable exclusively to the District, added provision that cost be paid from the appropriation for the District of Columbia, and made minor changes in phraseology.

Subsecs. (b), (c). Pub. L. 90-226 added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, all functions of the Board of Commissioners of the District of Columbia were transferred to the Commissioner of the District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. The office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the office of Mayor of the District of Columbia by section 421 of Pub. L. 93-198, classified to section 1-161 of the District of Columbia Code.

CROSS REFERENCES

Youth offenders convicted in District of Columbia, applicability of chapter to, see section 5024 of this title.

§ 5026. Parole of other offenders not affected

Nothing in this chapter shall be construed as repealing or modifying the duties, power, or authority of the Board of Parole, or of the Board of Parole of the District of Columbia, with respect to the parole of United States prisoners, or prisoners convicted in the District of Columbia, respectively, not held to be committed youth offenders or juvenile delinquents.

(Added Apr. 8, 1952, ch. 163, § 3(a), 66 Stat. 46.)

REFERENCES IN TEXT

The Board of Parole, referred to in text, deemed the United States Parole Commission, see Pub. L. 94-233, § 12, Mar. 15, 1976, 90 Stat. 233, set out as a note under section 4202 of this title.

REPEAL

Section 3(b) of act Sept. 30, 1950, ch. 1115, 64 Stat. 1089, which provided that the Federal Youth Corrections Act should not affect parole of regular prisoners,

was repealed by act Apr. 8, 1952, ch. 163, § 3(b), 66 Stat. 46.

CHAPTER 403—JUVENILE DELINQUENCY

Sec.
5031. Definitions.
5032. Delinquency proceedings in district courts; transfer for criminal prosecution.
5033. Custody prior to appearance before magistrate.
5034. Duties of magistrate.
5035. Detention prior to disposition.
5036. Speedy trial.
5037. Dispositional hearing.
5038. Use of juvenile records.
5039. Commitment.
5040. Support.
5041. Parole.
5042. Revocation of parole or probation.

Amendments

1974—Pub. L. 93-415, title V, § 513, Sept. 7, 1974, 88 Stat. 1138, substituted "Delinquency proceedings in district courts; transfer for criminal prosecution." for "Proceeding against juvenile delinquent." in item 5032; "Custody prior to appearance before magistrate." for "Jurisdiction; written consent; jury trial precluded." in item 5033; "Duties of magistrate." for "Probation; commitment to custody of Attorney General; support." in item 5034; "Detention prior to disposition." for "Arrest, detention and bail." in item 5035; "Speedy trial." for "Contracts for support; payment." in item 5036; "Dispositional hearing." for "Parole." in item 5037; and added items 5038 to 5042.

Cross References

Federal Youth Corrections Act, relationship to this chapter, see section 5023 of this title.

Federal Rules of Criminal Procedure

Applicability of rules to proceedings under this chapter, see rule 54, Appendix to this title.

Chapter Referred to in Other Sections

This chapter is referred to in section 4216 of this title; title 42 section 257.

Chapter Referred to in D.C. Code

This chapter is referred to in sections 22-3202, 22-3215a, 24-613 of the District of Columbia Code.

§ 5031. Definitions

For the purposes of this chapter, a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

(June 25, 1948, ch. 645, 62 Stat. 857; Sept. 7, 1974, Pub. L. 93-415, title V, § 501, 88 Stat. 1133.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 921 (June 16, 1938, ch. 486, § 1, 52 Stat. 764).

The phrase "who has not attained his eighteenth birthday" was substituted for "seventeen years of age or under" as more clearly reflecting congressional intent and administrative construction. The necessity of a definite fixing of the age of the juvenile was emphasized by Hon. Arthur J. Tuttle, United States district judge, Detroit, Mich., in a letter to the Committee on Revision of the Laws dated June 24, 1944.

Words "an offense against the" was changed to "the violation of a" without change of substance.

Minor change was made in translation of section references to "this chapter".

Amendments

1974—Pub. L. 93-415 added "or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday" following "eighteenth birthday," and substituted "committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult", for "committed by a juvenile and not punishable by death or life imprisonment."

Cross References

Juvenile delinquency prevention and control, see chapter 47 of Title 42, The Public Health and Welfare.

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alledged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile sixteen years and older alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency

record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavorial problems.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

(June 25, 1948, ch. 645, 62 Stat. 857; Sept. 7, 1974, Pub. L. 93-415, title V, § 502, 88 Stat. 1134.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 922 (June 16, 1938, ch. 486, § 2, 52 Stat. 765).

The final sentence of said section 922 of title 18, U.S.C., 1940 ed., was incorporated in section 5033 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Delinquency proceedings in district courts; transfer for criminal prosecution", for "Proceedings against juvenile delinquent" in section catchline, added provisions relating to certification to, and procedures in, district courts, transfer upon motion by Attorney General with respect to a juvenile sixteen years and older, factors considered in transfer, notice of transfer, barring of subsequent criminal or juvenile delinquency proceedings upon entering plea of guilty or upon taking of evidence, and admissibility of statements by a juvenile in subsequent criminal prosecution, and substituted provision relating to consent upon advice of counsel for treatment as an adult, for provision requiring consent for treatment as a juvenile.

CROSS REFERENCES

Punishment for escape or attempted escape, see section 751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 751 of this title.

§ 5033. Custody prior to appearance before magistrate

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate.

(June 25, 1948, ch. 645, 62 Stat. 857; Sept. 7, 1974, Pub. L. 93-415, title V, § 503, 88 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 922, 923 (June 16, 1938, ch. 486, §§ 2, 3, 52 Stat. 765).

This section consolidates said section 923, and the final sentence of said section 922, of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

This revised section and section 5032 of this title were rewritten to make clear the legislative intent that a juvenile delinquency proceeding shall result in the adjudication of a status rather than the conviction of a crime.

The other provisions of said section 922 are incorporated in section 5032 of this title.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Custody prior to appearance before magistrate", for "Jurisdiction; written consent; jury trial precluded" in section catchline, and substituted provisions relating to advice of rights by arresting officer, notification of Attorney General, parents, guardian or custodian, and appearance before magistrate, for provisions relating to jurisdiction of district courts, jury, consent by juvenile, and apprisal of rights by Judge of District Court.

§ 5034. Duties of magistrate

The magistrate shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate, the magistrate shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

(June 25, 1948, ch. 645, 62 Stat. 858; Mar. 31, 1962, Pub. L. 87-428, 76 Stat. 52; Sept. 7, 1974, Pub. L. 93-415, title V, § 504, 88 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 924 (June 16, 1938, ch. 486, § 4, 52 Stat. 765).

The words "foster homes" were inserted to remove any doubt as to the authority to commit to such foster homes in accordance with past and present administrative practice.

The reference to particular sections dealing with probation was omitted as unnecessary.

Changes were made in phraseology and arrangement.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Duties of magistrate", for "Probation; commitment to custody of Attorney General; support" in section catchline, and substituted provisions relating to procedure before, and duties of, magistrate, for provisions relating to probation, commitment to custody of Attorney General, duties of Attorney General, and procedures aiding court in determining whether to place juvenile on probation or commit him to custody of Attorney General.

1962—Pub. L. 87-428 added fourth paragraph authorizing commitment of a juvenile delinquent to the custody of the Attorney General for observation and study.

CROSS REFERENCES

Punishment for escape or attempted escape, see section 751 of this title.

Punishment for instigating or assisting escape, see section 752 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 751, 752 of this title.

§ 5035. Detention prior to disposition

A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

(June 25, 1948, ch. 645, 62 Stat. 858; Sept. 7, 1974, Pub. L. 93-415, title V, § 505, 88 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 925 (June 16, 1938, ch. 486, § 5, 52, Stat. 765).

Minor changes were made in arrangement and phraseology.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Detention prior to disposition", for "Arrest, detention and bail" in section catchline, deleted provisions relating to discretionary power of arresting officer or marshal to confine juvenile in jail, provisions relating to bail and default of bail, and added provisions relating to mandatory separation of juvenile from adjudicated delinquents, and provisions relating to the physical conditions of confining facility.

CROSS REFERENCES

Power of committing magistrates generally, see section 3041 of this title.

§ 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted.

(June 25, 1948, ch. 645, 62 Stat. 858; Sept. 7, 1974, Pub. L. 93-415, title V, § 506, 88 Stat. 1136.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 926 (June 16, 1938, ch. 486, § 6, 52 Stat. 766).

The words "foster homes" were inserted to remove any doubt as to the authority to commit to such foster homes in accordance with past and present administrative practice.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Speedy trial" for, "Contracts for support; payment" in section catchline, and substituted provisions relating to dismissal of information due to delay, for provisions relating to contracts with public or private agencies for custody and care of juvenile delinquents.

§ 5037. Dispositional hearing

(a) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty court days after trial unless the court has ordered further study in accordance with subsection (c). Copies of the presentence report shall be provided to the attorneys for both the juvenile and the Government a reasonable time in advance of the hearing.

(b) The court may suspend the adjudication of delinquency or the disposition of the delinquent on such conditions as it deems proper, place him on probation, or commit him to the custody of the Attorney General. Probation, commitment, or commitment in accordance with subsection (c) shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner, unless the juvenile has attained his nineteenth birthday at the time of disposition, in which case probation, commitment, or commitment in accordance with subsection (c) shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

(c) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by

counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an out-patient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.

(June 25, 1948, ch. 645, 62 Stat. 858; Sept. 7, 1974, Pub. L. 93-415, title V, § 507, 88 Stat. 1136.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 927 (June 16, 1938, ch. 486, § 7, 52 Stat. 766).

Reference to section establishing the Board of Parole was omitted as unnecessary.

Minor changes were made in phraseology.

AMENDMENTS

1974—Pub. L. 93-415 substituted "Dispositional hearing", for "Parole" in section catchline and deleted provisions relating to parole.

§ 5038. Use of juvenile records

(a) Throughout the juvenile delinquency proceeding the court shall safeguard the records from disclosure. Upon the completion of any juvenile delinquency proceeding whether or not there is an adjudication the district court shall order the entire file and record of such proceeding sealed. After such sealing, the court shall not release these records except to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court; and

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security.

Unless otherwise authorized by this section, information about the sealed record may not be released when the request for information is released to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to the sealing of his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the government, or others entitled under this section to receive sealed records.

(d) Unless a juvenile who is taken into custody is prosecuted as an adult—

(1) neither the fingerprints nor a photograph shall be taken without the written consent of the judge; and

(2) neither the name nor picture of any juvenile shall be made public by any medium of public information in connection with a juvenile delinquency proceeding.

(Added Pub. L. 93-415, title V, § 508, Sept. 7, 1974, 88 Stat. 1137.)

§ 5039. Commitment

No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

(Added Pub. L. 93-415, title V, § 509, Sept. 7, 1974, 88 Stat. 1138.)

§ 5040. Support

The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for "support of United States prisoners" or such other appropriations as he may designate.

(Added Pub. L. 93-415, title V, § 510, Sept. 7, 1974, 88 Stat. 1138.)

§ 5041. Parole

A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title.

(Added Pub. L. 93-415, title V, § 511, Sept. 7, 1974, 88 Stat. 1138, and amended Pub. L. 94-233, § 11, Mar. 15, 1976, 90 Stat. 233.)

AMENDMENTS

1976—Pub. L. 94-233 substituted provisions requiring that a committed juvenile delinquent may be released under regulations and conditions set by the Parole Commission in accordance with the provisions of section 4206 of this title for provision requiring that a committed juvenile delinquent shall be released from custody under such conditions as set by the Board of Parole as soon as the Board is satisfied that he is likely to remain at liberty without violating the law.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-233 effective on the 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94-233, set out as an Effective Date note under section 4201 of this title.

§ 5042. Revocation of parole or probation

Any juvenile parolee or probationer shall be accorded notice and a hearing with counsel before his parole or probation can be revoked.

(Added Pub. L. 93-415, title V, § 512, Sept. 7, 1974, 88 Stat. 1138.)

PART V—IMMUNITY OF WITNESSES

Sec.
6001. Definitions.
6002. Immunity generally.
6003. Court and grand jury proceedings.
6004. Certain administrative proceedings.
6005. Congressional proceedings.

AMENDMENTS

1970—Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 926, added part V and items 6001 to 6005.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 7 section 2146; title 15 section 1312.

§ 6001. Definitions

As used in this part—

(1) "agency of the United States" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board estalbished under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) "other information" includes any book, paper, document, record, recording, or other material;

(3) "proceeding before an agency of the United States" means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

(4) "court of the United States" means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

(Added Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 926.)

EFFECTIVE DATE; SAVINGS PROVISION

Section 260 of Pub. L. 91-452 provided that: "The provisions of part V of title 18, United States Code, added by title II of this Act [this part], and the amendments and repeals made by title II of this Act [sections 835, 895, 1406, 1954, 2424, 2514 and 3486 of this title, sections 15, 87f(f), 135c, 499m(f), and 2115 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 32, 33, 49, 77v, 78u(d), 79r(e), 80a-41, 80b-9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, sections 4874 and 7493 of Title 26, Internal Revenue Code, section 161(3) of Title 29, Labor, section 506 of Title 33, Navigation and Navigable waters, sections 405(f) and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, sections 827 and 1124 of Title 46, Shipping, section 409(l) of Title 47, Telegraphs, Telephones, and Radiotelegraphs, sections 9, 43, 46, 47, 48, 916, 1017, and 1484 of Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and 2155(b) of Title 50, Appendix], shall take effect on the sixtieth day following the date of the enactment of this Act [Oct. 15, 1970]. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day."

AMENDMENT OR REPEAL OF INCONSISTENT PROVISIONS

Section 259 of Pub. L. 91-452 provided that: "In addition to the provisions of law specifically amended or specifically repealed by this title [see Effective Date note set out above], any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act) [this part], is to that extent amended or repealed."

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, § 12, 64 Stat. 977, and ceased to operate June 30, 1973.

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to tes-

tify or provide other information in a proceeding before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(Added Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6003, 6004, 6005 of this title.

§ 6003. Court and grand jury proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Added Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.)

§ 6004. Certain administrative proceedings

(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Added Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.)

§ 6005. Congressional proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

(Added Pub. L. 91-452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 928.)

TITLE 18—APPENDIX

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UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

Pub. L. 90-351, title VII, §§ 1201-1203, June 19, 1968, 82 Stat. 236, as amended

TITLE REFERRED TO IN D.C. CODE

Title VII of Pub. L. 90-351 is referred to in section 6-1802 of the District of Columbia Code

§ 1201. Congressional findings and declaration

The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

(1) a burden on commerce or threat affecting the free flow of commerce,

(2) a threat to the safety of the President of the United States and Vice President of the United States,

(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

(As amended Pub. L. 90-618, title III, § 301(a)(1), Oct. 22, 1968, 82 Stat. 1236.)

AMENDMENTS

1968—Pub. L. 90-618 substituted "discharged under dishonorable conditions" for "other than honorably discharged".

EFFECTIVE DATE OF 1968 AMENDMENT

Section 302 of Pub. L. 90-618 provided that: "The amendments made by paragraphs (1) and (2) of subsection (a) of section 301 [amending this section and section 1202(a)(2), (b)(2) of this Appendix] shall take effect as of June 19, 1968."

§ 1202. Receipt, possession, or transportation of firearms

(a) Persons liable; penalties for violations

Any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(b) Employment; persons liable; penalties for violations

Any individual who to his knowledge and while being employed by any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(c) Definitions

As used in this title—

(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of

a State and punishable by a term of imprisonment of two years or less;

(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(As amended Pub. L. 90-618, title III, § 301(a)(2), (b), Oct. 22, 1968, 82 Stat. 1236.)

REFERENCES IN TEXT

Date of enactment of this Act, referred to in subsecs. (a) and (b) means June 19, 1968, the date of enactment of Pub. L. 90-351.

This title, referred to in subsec. (c), means title VII of Pub. L. 90-351, which is classified to sections 1201 to 1203 of this Appendix.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90-618, § 301(a)(2), substituted "dishonorable" for "other than honorable".

Subsec. (b)(2). Pub. L. 90-618, § 301(a)(2), substituted "dishonorable" for "other than honorable".

Subsec. (c)(2). Pub. L. 90-618, § 301(b), restricted definition of the term "felony" so as not to include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a state and punishable by a term of imprisonment of two years or less.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 90-618 effective June 19, 1968, see section 302 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 1201 of this Appendix.

§ 1203. Exemptions

This title shall not apply to—

(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

REFERENCES IN TEXT

This title, referred to in text, means title VII of Pub. L. 90-351, which is classified to sections 1201 to 1203 of this Appendix.

INTERSTATE AGREEMENT ON DETAINERS

Pub. L. 91-538, §§ 1-8, Dec. 9, 1970, 84 Stat. 1397-1403

CODIFICATION

The Interstate Agreement on Detainers is also set out in sections 24-701 to 24-705 of the District of Columbia Code

§ 1. Short title

That this Act may be cited as the "Interstate Agreement on Detainers Act".

§ 2. Enactment into law of Interstate Agreement on Detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the following form:

"The contracting States solemnly agree that:

"ARTICLE I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other

official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided,* That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further,* That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pend-

ing shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

§ 3. Definition of term "Governor" for purposes of United States and District of Columbia

The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

TRANSFER OF FUNCTIONS

"Mayor of the District of Columbia" was substituted for "Commissioner of the District of Columbia" pursuant to section 421 of Pub. L. 93-198. The Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3, of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the Office of Mayor of the District of Columbia by section 421 of Pub. L. 93-198, classified to section 1-161 of the District of Columbia Code.

§ 4. Definition of term "appropriate court"

The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

§ 5. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

§ 6. Regulations, forms, and instructions

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 91-538, Dec. 9, 1970, 84 Stat. 1397, known as the "Interstate Agreement on Detainers Act".

TRANSFER OF FUNCTIONS

"Mayor of the District of Columbia" was substituted for "Commissioner of the District of Columbia" pursuant to section 421 of Pub. L. 93-198. The Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the Office of Mayor of the District of Columbia by section 421 of Pub. L. 93-198, classified to section 1-161 of the District of Columbia Code.

§ 7. Reservation of right to alter, amend, or repeal

The right to alter, amend, or repeal this Act is expressly reserved.

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 91-538, Dec. 9, 1970, 84 Stat. 1397, known as the "Interstate Agreement on Detainers Act".

§ 8. Effective Date

This Act shall take effect on the ninetieth day after the date of its enactment.

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 91-538, Dec. 9, 1970, 84 Stat. 1397, known as the "Interstate Agreement on Detainers Act".

The date of its enactment, referred to in text, means Dec. 9, 1970.

FEDERAL RULES OF EVIDENCE

The text of the Federal Rules of Evidence enacted into law by Pub. L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1929, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure. Rule 1101(b) of the Rules of Evidence provides that the rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under the Bankruptcy Act.

RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

As amended to January 1, 1977

HISTORICAL NOTE

The original Rules of Criminal Procedure for the District Courts were transmitted to the Congress by the Attorney General on January 3, 1945, and became effective on March 21, 1946.

These rules have been amended Dec. 27, 1948, eff. Jan. 1, 1949; Dec. 27, 1958, eff. Oct. 20, 1949; Apr. 12, 1954, eff. July 1, 1954; Apr. 9, 1956, eff. 90 days thereafter; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 24, 1972, eff. Oct. 1, 1972; Nov. 20, 1972; Mar. 18, 1974, eff. July 1, 1974; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(1) to (11), (13) to (35), 89 Stat. 370 to 376; Dec. 12, 1975, Pub. L. 94-149, § 5, 89 Stat. 806; Apr. 26, 1976, eff. Aug. 1, 1976.

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9. Indictment for Obtaining Money by Impersonation of Federal Officer.
10. Indictment for Presenting Fraudulent Claim Against the United States.
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I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the courts of the United States, as defined in Rule 54(c); and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States magistrates and at proceedings before state and local judicial officers.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. These rules are prescribed under the authority of two acts of Congress, namely: the act of June 29, 1940, ch. 445, 18 U.S.C., former § 687 (now § 3771) (Proceedings in criminal cases prior to and including verdict; power of Supreme Court to prescribe rules), and the act of November 21, 1941, ch. 492, 18 U.S.C. former § 689 (now §§ 3771, 3772) (Proceedings to punish for criminal contempt of court; application to sections 687 and 688).

2. The courts of the United States covered by the rules are enumerated in Rule 54(a). In addition to Federal courts in the continental United States they include district courts in Alaska, Hawaii, Puerto Rico and the Virgin Islands. In the Canal Zone only the rules governing proceedings after verdict, finding or plea of guilty are applicable.

3. While the rules apply to proceedings before commissioners when acting as committing magistrates, they do not govern when a commissioner acts as a trial magistrate for the trial of petty offenses committed on Federal reservations. That procedure is governed by rules adopted by order promulgated by the Supreme Court on January 6, 1941 (311 U.S. 733), pursuant to the act of October 9, 1940, ch. 785, secs. 1–5. See 18 U.S.C. former §§ 576–576d (now §§ 3401, 3402) (relat-

ing to trial of petty offenses on Federal reservations by United States commissioners).

1972 AMENDMENT

The rule is amended to make clear that the rules are applicable to courts of the United States and, where the rule so provides, to proceedings before United States magistrates and state or local judicial officers.

Primarily these rules are intended to govern proceedings in criminal cases triable in the United States District Court. Special rules have been promulgated, pursuant to the authority set forth in 28 U.S.C. § 636(c), for the trial of "minor offenses" before United States magistrates. (See Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates (January 27, 1971).)

However, there is inevitably some overlap between the two sets of rules. The Rules of Criminal Procedure for the United States District Courts deal with preliminary, supplementary, and special proceedings which will often be conducted before United States magistrates. This is true, for example, with regard to rule 3—The Complaint; rule 4—Arrest Warrant or Summons Upon Complaint; rule 5—Initial Appearance Before the Magistrate; and rule 5.1—Preliminary Examination. It is also true, for example, of supplementary and special proceedings such as rule 40—Commitment to Another District, Removal; rule 41—Search and Seizure; and rule 46—Release from Custody. Other of these rules, where applicable, also apply to proceedings before United States magistrates. See Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, rule 1—Scope:

These rules govern the procedure and practice for the trial of minor offenses (including petty offenses) before United States magistrates under Title 18, U.S.C. § 3401, and for appeals in such cases to judges of the district courts. To the extent that pretrial and trial procedure and practice are not specifically covered by these rules, the Federal Rules of Criminal Procedure apply as to minor offenses other than petty offenses. All other proceedings in criminal matters, other than petty offenses, before United States magistrates are governed by the Federal Rules of Criminal Procedure.

State and local judicial officers are governed by these rules, but only when the rule specifically so provides. This is the case of rule 3—The Complaint; rule 4—Arrest Warrant or Summons Upon Complaint; and rule 5—Initial Appearance Before the Magistrate. These rules confer authority upon the "magistrate," a term which is defined in new rule 54 as follows:

"Magistrate" includes a United States magistrate as defined in 28 U.S.C. §§ 631-639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. § 3041 to perform the functions prescribed in rules 3, 4, and 5.

Rule 41 provides that a search warrant may be issued by "a judge of a state court of record" and thus confers that authority upon appropriate state judicial officers.

The scope of rules 1 and 54 is discussed in C. Wright, Federal Practice and Procedure: Criminal §§ 21, 871-874 (1969, Supp. 1971), and 8 and 8A J. Moore, Federal Practice chapters 1 and 54 (2d ed. Cipes 1970, Supp. 1971).

CROSS REFERENCES

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Rule 2. Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

NOTES OF ADVISORY COMMITTEE ON RULES

Compare Federal Rules of Civil Procedure, 28 U.S.C., following § 2072, Rule 1 (Scope of Rules), last sentence: "They [the Federal Rules of Civil Procedure, 28 U.S.C., Appendix,] shall be construed to secure the just, speedy, and inexpensive determination of every action."

II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

The rule generally states existing law and practice, 18 U.S.C. former § 591 (now § 3041) (Arrest and removal for trial); *United States* v. *Simon*, E.D. Pa., 248 F. 980; *United States* v. *Maresca*, S.D.N.Y., 266 F. 713, 719-721. It eliminates, however, the requirement of conformity to State law as to the form and sufficiency of the complaint. See, also, rule 57(b).

1972 AMENDMENT

The amendment deletes the reference to "commissioner or other officer empowered to commit persons charged with offenses against the United States" and substitute therefor "magistrate."

The change is editorial in nature to conform the language of the rule to the recently enacted Federal Magistrates Act. The term "magistrate" is defined in rule 54.

CROSS REFERENCES

Arrest without warrant, filing of complaint on bringing arrested person before Magistrate, see rule 5.

Copy of complaint, issuance of warrant of removal, see rule 40.

Dismissal of complaint, by Attorney General or United States attorney, see rule 48.

Extradition of fugitives from foreign country, complaint on oath, see section 3184 of this title.

Internal revenue law violations, see section 3045 of this title.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Warrant for arrest—

Description of offense charged in complaint, see rule 4.

Issued upon complaint, see rule 5.

Warrant of removal, issuance on copy of complaint, see rule 40.

Rule 4. Warrant or Summons Upon Complaint

(a) Issuance

If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause

The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form

(1) *Warrant.* The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

(d) Execution or Service; and Return

(1) *By Whom.* The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) *Return.* The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the requsest of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to the marshal or other authorized person for execution or service.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(1)-(3), 89 Stat. 370.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. The rule states the existing law relating to warrants issued by commissioner or other magistrate. United States Constitution, Amendment IV; 18 U.S.C. former § 591 (now § 3041) (Arrest and removal for trial).

2. The provision for summons is new, although a summons has been customarily used against corporate defendants, 28 U.S.C. former § 377 (now § 1651) (Power to issue writs); *United States* v. *John Kelso Co.*, 86 F. 304, N.D. Cal., 1898. See also, *Albrecht* v. *United States*, 273 U.S. 1, 8, 47 S. Ct. 250, 71 L. Ed. 505 (1927). The use of the summons in criminal cases is sanctioned by many States, among them Indiana, Maryland, Massachusetts, New York, New Jersey, Ohio, and others. See A.L.I. Code of Criminal Procedure (1931), Commentaries to secs. 12, 13, and 14. The use of the summons is permitted in England by 11 & 12 Vict., c. 42, sec. 1 (1848). More general use of a summons in place of a warrant was recommended by the National Commission on Law Observance and Enforcement, Report on Criminal Procedure (1931) 47. The Uniform Arrest Act, proposed by the Interstate Commission on Crime, provides for a summons. Warner, 28 Va. L.R. 315. See also, Medalie, 4 Lawyers Guild, R. 1, 6.

3. The provision for the issuance of additional warrants on the same complaint embodies the practice heretofore followed in some districts. It is desirable from a practical standpoint, since when a complaint names several defendants, it may be preferable to issue a separate warrant as to each in order to facilitate service and return, especially if the defendants are apprehended at different times and places. Berge, 42 Mich. L.R. 353, 356.

4. Failure to respond to a summons is not a contempt of court, but is ground for issuing a warrant.

Note to Subdivision (b)

Compare Rule 9(b) and forms of warrant and summons, Appendix of Forms.

Note to Subdivision (c)(2)

This rule and Rule 9(c)(1) modify the existing practice under which a warrant may be served only within the district in which it is issued. *Mitchell* v. *Dexter*, 244 F. 926 (C.C.A. 1st, 1917); Palmer v. Thompson, 20 App. D.C. 273 (1902); but see *In re Christian*, 82 F. 885, C.C.W.D. Ark., 1897; 2 Op. Atty. Gen. 564. When a defendant is apprehended in a district other than that in which the prosecution has been instituted, this change will eliminate some of the steps that are at present followed: the issuance of a warrant in the district where the prosecution is pending; the return of the warrant non est inventus; the filing of a complaint on the basis of the warrant and its return in the district in which the defendant is found; and the issuance of another warrant in the latter district. The warrant originally issued will have efficacy throughout the United States and will constitute authority for arresting the defendant wherever found. Waite, 27 Jour. of Am. Judicature Soc. 101, 103. The change will not modify or affect the rights of the defendant as to removal. See Rule 40. The authority of the marshal to serve process is not limited to the district for which he is appointed, 28 U.S.C. former § 503 (now § 569).

Note to Subdivision (c)(3)

1. The provision that the arresting officer need not have the warrant in his possession at the time of the arrest is rendered necessary by the fact that a fugitive may be discovered and apprehended by any one of many officers. It is obviously impossible for a warrant to be in the possession of every officer who is searching for a fugitive or who unexpectedly might find himself in a position to apprehend the fugitive. The rule sets forth the customary practice in such matters, which has the sanction of the courts. "It would be a strong proposition in an ordinary felony case to say that a fugitive from justice for whom a capias or war-

rant was outstanding could not be apprehended until the apprehending officer had physical possession of the capias or the warrant. If such were the law, criminals could circulate freely from one end of the land to the other, because they could always keep ahead of an officer with the warrant." *In re Kosopud*, N.D. Ohio, 272 Fed. 330, 336. Waite, 27 Jour. of Am. Judicature Soc. 101, 103. The rule, however, safeguards the defendant's rights in such case.

2. Service of summons under the rule is substantially the same as in civil actions under Federal Rules of Civil Procedure, Rule 4(d)(1), 28 U.S.C., Appendix.

Note to Subdivision (c)(4)

Return of a warrant or summons to the commissioner or other officer is provided by 18 U.S.C. § 603 [§ 4084] (Writs; copy as jailer's authority). The return of all "copies of process" by the commissioner to the clerk of the court is provided by 18 U.S.C. former § 591 (now § 3041); and see Rule 5(c), infra.

1966 AMENDMENT

In *Giordenello* v. *United States*, 357 U.S. 480 (1958) it was held that to support the issuance of a warrant the complaint must contain in addition to a statement "of the essential facts constituting the offense" (Rule 3) a statement of the facts relied upon by the complainant to establish probable cause. The amendment permits the complainant to state the facts constituting probable cause in a separate affidavit in lieu of spelling them out in the complaint. See also *Jaben* v. *United States*, 381 U.S. 214 (1965).

1972 AMENDMENT

Throughout the rule the term "magistrate" is substituted for the term "commissioner." Magistrate is defined in rule 54 to include a judge of the United States, a United States magistrate, and those state and local judicial officers specified in 18 U.S.C. § 3041.

1974 AMENDMENT

The amendments are designed to achieve several objectives: (1) to make explicit the fact that the determination of probable cause may be based upon hearsay evidence; (2) to make clear that probable cause is a prerequisite to the issuance of a summons; and (3) to give priority to the issuance of a summons rather than a warrant.

Subdivision (a) makes clear that the normal situation is to issue a summons.

Subdivision (b) provides for the issuance of an arrest warrant in lieu of or in addition to the issuance of a summons.

Subdivision (b)(1) restates the provision of the old rule mandating the issuance of a warrant when a defendant fails to appear in response to a summons.

Subdivision (b)(2) provides for the issuance of an arrest warrant rather than a summons whenever "a valid reason is shown" for the issuance of a warrant. The reason may be apparent from the face of the complaint or may be provided by the federal law enforcement officer or attorney for the government. See comparable provision in rule 9.

Subdivision (b)(3) deals with the situation in which conditions change after a summons has issued. It affords the government an opportunity to demonstrate the need for an arrest warrant. This may be done in the district in which the defendant is located if this is the convenient place to do so.

Subdivision (c) provides that a warrant or summons may issue on the basis of hearsay evidence. What constitutes probable cause is left to be dealt with on a case-to-case basis, taking account of the unlimited variations in source of information and in the opportunity of the informant to perceive accurately the factual data which he furnishes. See *e.g.*, *Giordenello* v. *United States*, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); *Aguilar* v. *Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); *United States* v. *Ventresca*, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965); *Jaben* v. *United States*, 381 U.S. 214, 85 S.Ct. 1365, 14 L.Ed.2d 345 (1965); *McCray* v. *Illinois*, 386 U.S. 300, 87 S.Ct. 1056, 18 L.Ed.2d 62 (1967); *Spinelli* v. *United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *United States* v. *Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971); Note, The Informer's Tip as Probable Cause for Search or Arrest, 54 Cornell L.Rev. 958 (1969); C. Wright, Federal Practice and Procedure: Criminal § 52 (1969, Supp. 1971); 8 S.J. Moore, Federal Practice ¶ 4.03 (2d ed. Cipes 1970, Supp. 1971).

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 4 of the Federal Rules of Criminal Procedure deals with arrest procedures when a criminal complaint has been filed. It provides in pertinent part:

> If it appears . . . that there is probable cause . . . a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the *request* of the attorney for the government a summons instead of a warrant *shall* issue. [emphasis added]

The Supreme Court's amendments make a basic change in Rule 4. As proposed to be amended, Rule 4 gives priority to the issuance of a summons instead of an arrest warrant. In order for the magistrate to issue an arrest warrant, the attorney for the government must show a "valid reason."

B. Committee Action. The Committee agrees with and approves the basic change in Rule 4. The decision to take a citizen into custody is a very important one with far-reaching consequences. That decision ought to be made by a neutral official (a magistrate) rather than by an interested party (the prosecutor).

It has been argued that undesirable consequences will result if this change is adopted—including an increase in the number of fugitives and the introduction of substantial delays in our system of criminal justice. [See testimony of Assistant Attorney General W. Vincent Rakestraw in Hearings on Proposed Amendments to Federal Rules of Criminal Procedure Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 93d Cong., 2d Sess., Serial No. 61, at 41-43 (1974) [hereinafter cited as "Hearing I"].] The Committee has carefully considered these arguments and finds them to be wanting. [The Advisory Committee on Criminal Rules has thoroughly analyzed the arguments raised by Mr. Rakestraw and convincingly demonstrated that the undesirable consequences predicted will not necessarily result. See Hearings on Proposed Amendments to Federal Rules on Proposed Amendments to Federal Rules of Criminal Procedure Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 94th Congress, 1st Session, Serial No. 6, at 208-09 (1975) [hereinafter cited "Hearings II"].] The present rule permits the use of a summons in lieu of a warrant. The major difference between the present rule and the proposed rule is that the present rule vests the decision to issue a summons or a warrant in the prosecutor, while the proposed rule vests that decision in a judicial officer. Thus, the basic premise underlying the arguments against the proposed rule is the notion that only the prosecutor can be trusted to act responsiblity in deciding whether a summons or a warrant shall issue.

The Committee rejects the notion that the federal judiciary cannot be trusted to exercise discretion wisely and in the public interest.

The Committee recast the language of Rule 4(b). No change in substance is intended. The phrase "valid reason" was changed to "good cause," a phrase with which lawyers are more familiar. [Rule 4, both as proposed by the Supreme Court and as changed by the Committee, does not in any way authorize a magistrate to issue a summons or a warrant sua sponte, nor does it enlarge, limit or change in any way the law governing warrantless arrests.]

The Committee deleted two sentences from Rule 4(c). These sentences permitted a magistrate to ques-

tion the complainant and other witnesses under oath and required the magistrate to keep a record or summary of such a proceeding. The Committee does not intend this change to discontinue or discourage the practice of having the complaintant appear personally or the practice of making a record or summary of such an appearance. Rather, the Committee intended to leave Rule 4(c) neutral on this matter, neither encouraging nor discouraging these practices.

The Committee added a new section that provides that the determination of good cause for the issuance of a warrant in lieu of a summons shall not be grounds for a motion to suppress evidence. This provision does not apply when the issue is whether there was probable cause to believe an offense has been committed. This provision does not in any way expand or limit the so-called "exclusionary rule."

CONFERENCE COMMITTEE NOTES, HOUSE REPORT NO. 94-414

Rule 4(e)(3) deals with the manner in which warrants and summonses may be served. The House version provides two methods for serving a summons: (1) personal service upon the defendant, or (2) service by leaving it with someone of suitable age at the defendant's dwelling *and* by mailing it to the defendant's last known address. The Senate version provides three methods: (1) personal service, (2) service by leaving it with someone of suitable age at the defendant's dwelling, or (3) service by mailing it to defendant's last known address.

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Section 2 of Pub. L. 94-64 provided that: "The amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure [adding rules 12.1, 12.2 and 29.1 and amending rules 4, 9, 11, 12, 15, 16, 17, 20, 32, and 43 of these rules] which are embraced in the order of that Court on April 22, 1974, are approved except as otherwise provided in this Act and shall take effect on December 1, 1975. Except with respect to the amendment to Rule 11, insofar as it adds Rule 11(e)(6), which shall take effect on August 1, 1975, the amendments made by section 3 of this Act [to rules 4, 9, 11, 12, 12.1, 12.2, 15, 16, 17, 20, 32, and 43 of these rules] shall also take effect on December 1, 1975."

SHORT TITLE OF 1975 AMENDMENTS

Section 1 of Pub. L. 94-64 provided: "That this Act [amending rules 4, 9, 11, 12, 12.1, 12.2, 15, 16, 17, 20, 32 and 43 of these rules and enacting provisions set out as a note under this rule] may be cited as the 'Federal Rules of Criminal Procedure Amendments Act of 1975'."

CROSS REFERENCES

Arrest without warrant, appearance before magistrate, see rule 5.

Commitment to another district and removal, use of warrant, see rule 40.

Indictment or information, warrant issued on, see rule 9.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Warrant for arrest of—

Defendant, see form 12.

Witness, see form 22.

Rule 5. Initial Appearance Before the Magistrate

(a) In General

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of this rule.

(b) Minor Offenses

If the charge against the defendant is a minor offense triable by a United States magistrate under 18 U.S.C. § 3401, the United States magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(c) Offenses not Triable by the United States Magistrate

If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall also inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by statute or in these rules.

A defendant is entitled to a preliminary examination, unless waived, when charged with any offense, other than a petty offense, which is to be tried by a judge of the district court. If the defendant waives preliminary examination, the magistrate shall forthwith hold him to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if he is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in district court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a federal magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the United States only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. The time within which a prisoner must be brought before a committing magistrate is defined differently in different statutes. The rule supersedes all statutory provisions on this point and fixes a single standard, i. e., "without unnecessary delay", 18 U.S.C. former § 593 (Operating illicit distillery; arrest; bail); 18 U.S.C. former § 595 (Persons arrested taken before nearest officer for hearing); 5 U.S.C. former § 300a (now 18 U.S.C. §§ 3052, 3107) (Division of Investigation; authority of officers to serve warrants and make arrests); 16 U.S.C. former § 10 (Arrests by employees of park service for violations of laws and regulations); 16 U.S.C. § 706 (Migratory Bird Treaty Act; arrests; search warrants); D.C. Code (1940), Title 4, sec. 140 (Arrests without warrant); see, also, 33 U.S.C. former § 436, §§ 446, 452; 46 U.S.C. former § 708 (now 18 U.S.C. § 2279). What constitutes "unnecessary delay", i.e., reasonable time within which the prisoner should be brought before a committing magistrate, must be determined in the light of all the facts and circumstances of the case. The following authorities discuss the question what constitutes reasonable time for this purpose in various situations: *Carroll* v. *Parry*, 48 App.D.C. 453; *Janus* v. *United States*, 38 F.2d 431, C.C.A. 9th; *Commonwealth* v. *Di Stasio*, 294 Mass. 273, 1 N.E.2d 189; *State* v. *Freeman*, 86 N.C. 683; *Peloquin* v. *Hibner*, 231 Wis. 77, 285, N.W. 380; see, also, Warner, 28 Va.L.R. 315, 339-341.

2. The rule also states the prevailing State practice, A.L.I. Code of Criminal Procedure (1931), Commentaries to secs. 35, 36.

Note to Subdivisions (b) and (c)

1. These rules prescribe a uniform procedure to be followed at preliminary hearings before a commissioner. They supersede the general provisions of 18 U.S.C. former § 591 (now § 3041) (Arrest and removal for trial). The procedure prescribed by the rules is that generally prevailing. See *Wood* v. *United States*, 128 F. 265, 271-272, App. D.C.; A.L.I. Code of Criminal Procedure (1931), secs. 39-60 and Commentaries thereto; Manual for United States Commissioners, pp. 6-10, published by Administrative Office of the United States Courts.

2. Pleas before a commissioner are excluded, as a plea of guilty at this stage has no legal status or function except to serve as a waiver of preliminary examination. It has been held inadmissible in evidence at the trial, if the defendant was not represented by counsel when the plea was entered. *Wood* v. *United States*, 128 F. 2d 265, App. D.C. The rule expressly provides for a waiver of examination, thereby eliminating any necessity for a provision as to plea.

1966 AMENDMENT

The first change is designed to insure that under the revision made in Rule 4(a) the defendant arrested on a warrant will receive the same information concerning the basis for the issuance of the warrant as would previously have been given him by the complaint itself.

The second change obligates the commissioner to inform the defendant of his right to request the assignment of counsel if he is unable to obtain counsel. Cf. the amendment to Rule 44, and the Advisory Committee's Note thereon.

1972 AMENDMENT

There are a number of changes made in rule 5 which are designed to improve the editorial clarity of the rule; to conform the rule to the Federal Magistrates Act; and to deal explicitly in the rule with issues as to which the rule was silent and the law uncertain.

The principal editorial change is to deal separately with the initial appearance before the magistrate and the preliminary examination. They are dealt with together in old rule 5. They are separated in order to prevent confusion as to whether they constitute a single or two separate proceedings. Although the preliminary examination can be held at the time of the initial appearance, in practice this ordinarily does not occur. Usually counsel need time to prepare for the preliminary examination and as a consequence a separate date is typically set for the preliminary examination.

Because federal magistrates are reasonably available to conduct initial appearances, the rule is drafted on the assumption that the initial appearance is before a federal magistrate. If experience under the act indicates that there must be frequent apperances before state or local judicial officers it may be desirable to draft an additional rule, such as the following, detailing the procedure for an initial appearance before a state or local judicial officer:

Initial Appearance Before a State or Local Judicial Officer. If a United States magistrate is not reasonably available under rule 5(a), the arrested person shall be brought before a state or local judicial officer authorized by 18 U.S.C. § 3041, and such officer shall inform the person of the rights specified in rule 5(c) and shall authorize the release of the arrested person under the terms provided for by these rules and by 18 U.S.C. § 3146. The judicial officer shall immediately transmit any written order of release and any papers filed before him to the appropriate United States magistrate of the district and order the arrested person to appear before such United States magistrate within three days if not in custody or at the next regular hour of business of the United States magistrate if the arrested person is retained in custody. Upon his appearance before the United States magistrate, the procedure shall be that prescribed in rule 5.

Several changes are made to conform the language of the rule to the Fedeeral Magistrates Act.

(1) The term "magistrate," which is defined in new rule 54, is substituted for the term "commissioner." As defined, "magistrate" includes those state and local judicial officers specified in 18 U.S.C. § 3041, and thus the initial appearance may be before a state or local judicial officer when a federal magistrate is not reasonably available. This is made explicit in subdivision (a).

(2) Subdivision (b) conforms the rule to the procedure prescribed in the Federal Magistrate Act when a defendant appears before a magistrate charged with a "minor offense" as defined in 18 U.S.C. § 3401(f):

"misdemeanors punishable under the laws of the United States, the penalty for which does not exceed imprisonment for a period of one year, or a fine of not more than $1,000, or both, except that such term does not include . . . [specified exceptions]."

If the "minor offense" is tried before a United States magistrate, the procedure must be in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, (January 27, 1971).

(3) Subdivision (d) makes clear that a defendant is not entitled to a preliminary examination if he has been indicted by a grand jury prior to the date set for the preliminary examination or, in appropriate cases, if any information is filed in the district court prior to that date. See C. Wright, Federal Practice and Procedure: Criminal § 80, pp. 137-140 (1969, Supp. 1971). This is also provided in the Federal Magistrates Act, 18 U.S.C. § 3060(e).

Rule 5 is also amended to deal with several issues not dealt with in old rule 5:

Subdivision (a) is amended to make clear that a complaint, complying with the requirements of rule 4(a), must be filed whenever a person has been arrested without a warrant. This means that the complaint, or an affidavit or affidavits filed with the complaint, must show probable cause. As provided in rule 4(a) the showing of probable cause "may be based upon hearsay evidence in whole or in part."

Subdivision (c) provides that defendant should be notified of the general circumstances under which he is entitled to pretrial release under the Bail Reform Act of 1966 (18 U.S.C. §§ 3141-3152). Defendants often do not in fact have counsel at the initial appearance

and thus, unless told by the magistrate, may be unaware of their right to pretrial release. See C. Wright, Federal Practice and Procedure: Criminal § 78 N. 61 (1969).

Subdivision (c) makes clear that a defendant who does not waive his right to trial before a judge of the district court is entitled to a preliminary examination to determine probable cause for any offense except a petty offense. It also, by necessary implication, makes clear that a defendant is not entitled to a preliminary examination if he consents to be tried on the issue of guilt or innocence by the United States magistrate, even though the offense may be one not heretofore triable by the United States commissioner and therefore one as to which the defendant had a right to a preliminary examination. The rationale is that the preliminary examination serves only to justify holding the defendant in custody or on bail during the period of time it takes to bind the defendant over to the district court for trial. See *State* v. *Solomon*, 158 Wis. 146, 147 N.W. 640 (1914). A similar conclusion is reached in the New York Proposed Criminal Procedure Law. See McKinney's Session Law News, April 10, 1969, at p. A-119.

Subdivision (c) also contains time limits within which the preliminary examination must be held. These are taken from 18 U.S.C. § 3060. The provisions for the extension of the prescribed time limits are the same as the provisions of 18 U.S.C. § 3060 with two exceptions: The new language allows delay consented to by the defendant only if there is "a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases." This reflects the view of the Advisory Committee that delay, whether prosecution or defense induced, ought to be avoided whenever possible. The second difference between the new rule and 18 U.S.C. § 3060 is that the rule allows the decision to grant a continuance to be made by a United States magistrate as well as by a judge of the United States. This reflects the view of the Advisory Committee that the United States magistrate should have sufficient judicial competence to make decisions such as that contemplated in subdivision (c).

CROSS REFERENCES

Appeal from conviction by United States Magistrate, see section 3402 of this title.

Appearance before magistrate, see rule 9.

Application to judges of rules applicable to proceedings before magistrates, see rule 54.

Commitment to another district and removal, see rule 40.

Fees, trial of petty offenses, see section 3401 of this title.

Powers of courts and magistrates, arrest and commitment, see section 3041 of this title.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Records, duty to keep, see rule 55.

Return of warrant, see rule 4.

Subpoena, issuance by commissioner, see rule 17.

Rule 5.1. Preliminary Examination

(a) Probable Cause Finding

If from the evidence it appears that there is probable cause to believe that an offense has been committed or that the defendant committed it, the federal magistrate shall forthwith hold him to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) Discharge of Defendant

If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the federal magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) Records

After concluding the proceeding the federal magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding. The magistrate shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a federal magistrate, the attorney for a defendant in a criminal case may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may, by local rule, appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any judge thereof, an order may issue that the federal magistrate make available a copy of the transcript, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security therefor, in which case the expense shall be paid by the Director of the Administrative Office of the United States Courts from available appropriated funds. Counsel for the government may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(Added Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 5.1 is, for the most part, a clarification of old rule 5(c).

Under the new rule, the preliminary examination must be conducted before a "federal magistrate" as defined in rule 54. Giving state or local judicial officers authority to conduct a preliminary examination does not seem necessary. There are not likely to be situations in which a "federal magistrate" is not "reasonably available" to conduct the preliminary examination, which is usually not held until several days after the initial appearance provided for in rule 5.

Subdivision (a) makes clear that a finding of probable cause may be based on "hearsay evidence in whole or in part." The propriety of relying upon hearsay at the preliminary examination has been a matter of some uncertainty in the federal system. See C. Wright, Federal Practice and Procedure: Criminal § 80 (1969, Supp. 1971); 8 J. Moore, Federal Practice ¶ 504[4] (2d ed. Cipes 1970, Supp. 1971); *Washington* v. *Clemmer*, 339 F. 2d 715, 719 (D.C. Cir. 1964); *Washington* v. *Clemmer*, 339 F. 2d 725, 728 (D.C. Cir. 1964); *Ross* v. *Sirica*, 380 F. 2d 557, 565 (D.C. Cir. 1967); *Howard* v. *United States*, 389 F. 2d 287, 292 (D.C. Cir. 1967); Weinberg and Weinberg, The Congressional Invitation to Avoid the Preliminary Hearing: An Analysis of Section 303 of the Federal Magistrates Act of

1968, 67 Mich. L. Rev. 1361, especially n. 92 at 1383 (1969); D. Wright, The Rules of Evidence Applicable to Hearings in Probable Cause, 37 Conn. B.J. 561 (1963); Comment, Preliminary Examination—Evidence and Due Process, 15 Kan. L. Rev. 374, 379-381 (1967).

A grand jury indictment may properly be based upon hearsay evidence. *Costello* v. *United States*, 350 U.S. 359 (1956); 8 J. Moore, Federal Practice ¶6.03 [2] (2d ed. Cipes 1970, Supp. 1971). This being so, there is practical advantage in making the evidentiary requirements for the preliminary examination as flexible as they are for the grand jury. Otherwise there will be increased pressure upon United States Attorneys to abandon the preliminary examination in favor of the grand jury indictment. See C. Wright, Federal Practice and Procedure: Criminal § 80 at p. 143 (1969). New York State, which also utilizes both the preliminary examination and the grand jury, has under consideration a new Code of Criminal Procedure which would allow the use of hearsay at the preliminary examination. See McKinney's Session Law News, April 10, 1969, pp. A119-A120.

For the same reason, subdivision (a) also provides that the preliminary examination is not the proper place to raise the issue of illegally obtained evidence. This is current law. In *Giordenello* v. *United States*, 357 U.S. 480, 484 (1958), the Supreme Court said:

[T]he Commissioner here had no authority to adjudicate the admissibility at petitioner's later trial of the heroin taken from his person. That issue was for the trial court. This is specifically recognized by Rule 41(e) of the Criminal Rules, which provides that a defendant aggrieved by an unlawful search and seizure may "* * * move the district court * * * to suppress for use as evidence anything so obtained on the ground that * * *" the arrest warrant was defective on any of several grounds.

Dicta in *Costello* v. *United States*, 350 U.S. 359, 363-364 (1956), and *United States* v. *Blue*, 384 U.S. 251, 255 (1966), also support the proposed rule. In *United States ex rel. Almeida* v. *Rundle*, 383 F. 2d 421, 424 (3d Cir. 1967), the court, in considering the adequacy of an indictment said:

On this score, it is settled law that (1) "[an] indictment returned by a legally constituted nonbiased grand jury, * * * is enough to call for a trial of the charge on the merits and satisfies the requirements of the Fifth Amendment.", *Lawn* v. *United States*, 355 U.S. 399, 349, 78 S. Ct. 311, 317, 2 L.Ed. 2d 321 (1958); (2) an indictment cannot be challenged "on the ground that there was inadequate or incompetent evidence before the grand jury", *Costello* v. *United States*, 350 U.S. 359, 363, 76 S.Ct. 406, 408, 100 L.Ed. 397 (1956); and (3) a prosecution is not abated, nor barred, even where "tainted evidence" has been submitted to a grand jury, *United States* v. *Blue*, 384 U.S. 251, 86 S.Ct. 1416, 16 L.Ed. 2d 510 (1966).

See also C. Wright, Federal Practice and Procedure: Criminal § 80 at 143 n. 5 (1969, Supp. 1971) 8 J. Moore, Federal Practice ¶ 6.03 [3] (2d ed. Cipes 1970, Supp. 1971). The Manual for United States Commissioners (Administrative Office of United States Courts, 1948) provides at pp. 24-25: "Motions for this purpose [to suppress illegally obtained evidence] may be made and heard only before a district judge. Commissioners are not empowered to consider or act upon such motions."

It has been urged that the rules of evidence at the preliminary examination should be those applicable at the trial because the purpose of the preliminary examination should be, not to review the propriety of the arrest or prior detention, but rather to determine whether there is evidence sufficient to justify subjecting the defendant to the expense and inconvenience of trial. See Weinberg and Weinberg, The Congressional Invitation to Avoid the Preliminary Hearing: An Analysis of Section 303 of the Federal Magistrates Act of 1968, 67 Mich. L. Rev. 1361, 1396-1399 (1969). The rule rejects this view for reasons largely of administrative necessity and the efficient administration of justice. The Congress has decided that a preliminary examination shall not be required when there is a grand jury indictment (18 U.S.C. § 3060). Increasing the procedural and evidentiary requirements applicable to the preliminary examination will therefore add to the administrative pressure to avoid the preliminary examination. Allowing objections to evidence on the ground that evidence has been illegally obtained would require two determinations of admissibility, one before the United States magistrate and one in the district court. The objective is to reduce, not increase, the number of preliminary motions.

To provide that a probable cause finding may be based upon hearsay does not preclude the magistrate from requiring a showing that admissible evidence will be available at the time of trial. See Comment, Criminal Procedure—Grand Jury—Validity of Indictment Based Solely on Hearsay Questioned When Direct Testimony Is Readily Available, 43 N.Y.U. L. Rev. 578 (1968); *United States* v. *Umans*, 368 F. 2d. 725 (2d Cir. 1966), cert. dismissed as improvidently granted 389 U.S. 80 (1967); *United States* v. *Andrews*, 381 F. 2d 377, 378 (2d Cir. 1967); *United States* v. *Messina*, 388 F. 2d 393, 394 n. 1 (2d Cir. 1968); and *United States* v. *Beltram*. 388 F. 2d 449 (2d Cir. 1968); and *United States* v. *Arcuri*, 282 F. Supp. 347 (E.D.N.Y. 1968). The fact that a defendant is not entitled to object to evidence alleged to have been illegally obtained does not deprive him of an opportunity for a pretrial determination of the admissibility of evidence. He can raise such an objection prior to trial in accordance with the provisions of rule 12.

Subdivision (b) makes it clear that the United States magistrate may not only discharge the defendant but may also dismiss the complaint. Current federal law authorizes the magistrate to discharge the defendant but he must await authorization from the United States Attorney before he can close his records on the case by dismissing the complaint. Making dismissal of the complaint a separate procedure accomplishes no worthwhile objective, and the new rule makes it clear that the magistrate can both discharge the defendant and file the record with the clerk.

Subdivision (b) also deals with the legal effect of a discharge of a defendant at a preliminary examination. This issue is not dealt with explicitly in the old rule. Existing federal case law is limited. What cases there are seem to support the right of the government to issue a new complaint and start over. See *e.g.*, *Collins* v. *Loisel*, 262 U.S. 426 (1923); *Morse* v. *United States*, 267 U.S. 80 (1925). State law is similar. See *People* v. *Dillon*, 197 N.Y. 254, 90 N.E. 820 (1910; *Tell* v. *Wolke*, 21 Wis. 2d 613, 124 N.W. 2d 655 (1963). In the *Tell* case the Wisconsin court stated the common rationale for allowing the prosecutor to issue a new complaint and start over:

The state has no appeal from errors of law committed by a magistrate upon preliminary examination and the discharge on a preliminary would operate as an unchallengeable acquittal. * * * The only way an error of law committed on the preliminary examination prejudicial to the state may be challenged or corrected is by a preliminary examination on a second complaint. (21 Wis. 2d at 619-620.)

Subdivision (c) is based upon old rule 5(c) and upon the Federal Magistrates Act, 18 U.S.C. § 3060(f). It provides methods for making available to counsel the record of the preliminary examination. See C. Wright, Federal Practice and Procedure: Criminal § 82 (1969, Supp. 1971). The new rule is designed to eliminate delay and expense occasioned by preparation of transcripts where listening to the tape recording would be sufficient. Ordinarily the recording should be made available pursuant to subdivision (c)(1). A written transcript may be provided under subdivision (c)(2) at the discretion of the court, a discretion which must be exercised in accordance with *Britt* v. *North Carolina*, 404 U.S. 226, 30 L.Ed. 2d 400, 405 (1971):

A defendant who claims the right to a free transcript does not, under our cases, bear the burden of proving inadequate such alternatives as may be suggested by the State or conjured up by a court in hindsight. In this case, however, petitioner has conceded

that he had available an informal alternative which appears to be substantially equivalent to a transcript. Accordingly, we cannot conclude that the court below was in error in rejecting his claim.

III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury

(a) Summoning Grand Juries

The court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(b) Objections to Grand Jury and to Grand Jurors

(1) *Challenges.* The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) *Motion to dismiss.* A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreman and Deputy Foreman

The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman.

(d) Who May be Present

Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Secrecy of Proceedings and Disclosure

Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(f) Finding and Returning of Indictment

An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a federal magistrate in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in finding an indictment, the foreman shall so report to a federal magistrate in writing forthwith.

(g) Discharge and Excuse

A grand jury shall serve until discharged by the court but no grand jury may serve more than 18 months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 26, 1976, eff. Aug. 1, 1976.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. The first sentence of this rule vests in the court full discretion as to the number of grand juries to be summoned and as to the times when they should be convened. This provision supersedes the existing law, which limits the authority of the court to summon more than one grand jury at the same time. At present two grand juries may be convened simultaneously only in a district which has a city or borough of at least 300,000 inhabitants, and three grand juries only in the Southern District of New York, 28 U.S.C. former § 421 (Grand juries; when, how and by whom summoned; length of service). This statute has been construed, however, as only limiting the authority of the court to summon more than one grand jury for a single place of holding court, and as not circumscribing the power to convene simultaneously several grand juries at different points within the same district, *Morris* v. *United States*, 128 F.2d 912, C.C.A. 5th; *United States* v. *Perlstein*, 39 F.Supp. 965, D.N.J.

2. The provision that the grand jury shall consist of not less than 16 and not more than 23 members continues existing law, 28 U.S.C. former § 419 (now 18 U.S.C. § 3321) (Grand jurors; number when less than required number).

3. The rule does not affect or deal with the method of summoning and selecting grand juries. Existing statutes on the subjects are not superseded. See 28 U.S.C. former §§ 411–426 (now §§ 1861–1870). As these provisions of law relate to jurors for both criminal and civil cases, it seemed best not to deal with this subject.

Note to Subdivision (b)(1)

Challenges to the array and to individual jurors, although rarely invoked in connection with the selection of grand juries, are nevertheless permitted in the Federal courts and are continued by this rule, *United States* v. *Gale*, 109 U.S. 65, 69-70, 3 S. Ct. 1, 27 L. Ed. 857; *Clawson* v. *United States*, 114 U.S. 477, 5 S. Ct. 949, 29 L. Ed. 179; *Agnew* v. *United States*, 165 U.S. 36, 44, 17 S. Ct. 235, 41 L. Ed. 624. It is not contemplated, however, that defendants held for action of the grand jury shall receive notice of the time and place of the impaneling of a grand jury, or that defendants in custody shall be brought to court to attend at the selection of the grand jury. Failure to challenge is not a waiver of any objection. The objection may still be interposed by motion under Rule 6(b)(2).

Note to Subdivision (b)(2)

1. The motion provided by this rule takes the place of a plea in abatement, or motion to quash. *Crowley* v. *United States*, 194 U.S. 461, 469-474, 24 S. Ct. 731, 48 L. Ed. 1075; *United States* v. *Gale*, *supra*.

2. The second sentence of the rule is a restatement of 18 U.S.C. former § 554(a) (Indictments and presentments; objection on ground of unqualified juror barred where twelve qualified jurors concurred; record of number concurring), and introduces no change in existing law.

Note to Subdivision (c)

1. This rule generally is a restatement of existing law, 18 U.S.C. former § 554(a) and 28 U.S.C. former § 420. Failure of the foreman to sign or endorse the indictment is an irregularity and is not fatal, *Frisbie* v. *United States*, 157 U.S. 160, 163-165, 15 S. Ct. 586, 39 L. Ed. 657.

2. The provision for the appointment of a deputy foreman is new. Its purpose is to facilitate the transaction of business if the foreman is absent. Such a provision is found in the law of at least one State, N.Y. Code Criminal Procedure, sec. 244.

Note to Subdivision (d)

This rule generally continues existing law. See 18 U.S.C. former § 556 (Indictments and presentments; defects of form); and 5 U.S.C. § 310 [28 § 515(a)] (Conduct of legal proceedings).

Note to Subdivision (e)

1. This rule continues the traditional practice of secrecy on the party of members of the grand jury, except when the court permits a disclosure, *Schmidt* v. *United States*, 115 F.2d 394, C.C.A. 6th; *United States* v. *American Medical Association*, 26 F. Supp. 429, D.C.; Cf. *Atwell* v. *United States*, 162 Fed. 97, C.C.A. 4th; and see 18 U.S.C. former § 554(a) (Indictments and presentments; objection on ground of unqualified juror barred where twelve qualified jurors concurred; record of number concurring). Government attorneys are entitled to disclosure of grand jury proceedings, other than the deliberations and the votes of the jurors, inasmuch as they may be present in the grand jury room during the presentation of evidence. The rule continues this practice.

2. The rule does not impose any obligation of secrecy on witnesses. The existing practice on this point varies among the districts. The seal of secrecy on witnesses seems an unnecessary hardship and may lead to injustice if a witness is not permitted to make a disclosure to counsel or to an associate.

3. The last sentence authorizing the court to seal indictments continues present practice.

Note to Subdivision (f)

This rule continues existing law, 18 U.S.C. former § 554 (Indictments and presentments; by twelve grand jurors). The purpose of the last sentence is to provide means for a prompt release of a defendant if in custody, or exoneration of bail if he is on bail, in the event that the grand jury considers the case of a defendant held for its action and finds no indictment.

Note to Subdivision (g)

Under existing law a grand jury serves only during the term for which it is summoned, but the court may extend its period of service for as long as 18 months, 28 U.S.C. former § 421. During the extended period, however, a grand jury may conduct only investigations commenced during the original term. The rule continues the 18 months' maximum for the period of service of a grand jury, but provides for such service as a matter of course, unless the court terminates it at an earlier date. The matter is left in the discretion of the court, as it is under existing law. The expiration of a term of court as a time limitation is elsewhere entirely eliminated (Rule 45(c)) and specific time limitations are substituted therefor. This was previously done by the Federal Rules of Civil Procedure for the civil side of the courts (Federal Rules of Civil Procedure, Rule 6(c), 28 U.S.C., Appendix). The elimination of the requirement that at an extended period the grand jury may continue only investigations previously commenced, will obviate such a controversy as was presented in *United States* v. *Johnson*, 319 U.S. 503, 63 S. Ct. 1233, 87 L. Ed. 1546, rehearing denied 320 U.S. 808, 64 S. Ct. 25, 88 L. Ed. 488.

1966 AMENDMENT

Subdivision (d).—The amendment makes it clear that recording devices may be used to take evidence at grand jury sessions.

Subdivision (e).—The amendment makes it clear that the operator of a recording device and a typist who transcribes recorded testimony are bound to the obligation of secrecy.

Subdivision (f).—A minor change conforms the language to what doubtless is the practice. The need for a report to the court that no indictment has been found may be present even though the defendant has not been "held to answer." If the defendant is in custody or has given bail, some official record should be made of the grand jury action so that the defendant can be released or his bail exonerated.

1972 AMENDMENT

Subdivision (b)(2) is amended to incorporate by express reference the provisions of the Jury Selection and Service Act of 1968. That act provides in part:

The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime [or] the Attorney General of the United States * * * may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. [28 U.S.C. § 1867(c)]

Under rule 12(e) the judge shall decide the motion before trial or order it deferred until after verdict. The authority which the judge has to delay his ruling until after verdict gives him an option which can be exercised to prevent the unnecessary delay of a trial in the event that a motion attacking a grand jury is made on the eve of the trial. In addition, rule 12(c) gives the judge authority to fix the time at which pretrial motions must be made. Failure to make a pretrial motion at the appropriate time may constitute a waiver under rule 12(f).

1976 AMENDMENT

Under the proposed amendment to rule 6(f), an indictment may be returned to a federal magistrate. ("Federal magistrate" is defined in rule 54(c) as including a United States magistrate as defined in 28 U.S.C. §§ 631-639 and a judge of the United States.) This change will foreclose the possibility of noncompliance with the Speedy Trial Act timetable because of the nonavailability of a judge. Upon the effective date of certain provisions of the Speedy Trial Act of 1974, the timely return of indictments will become a matter of critical importance; for the year commencing July 1, 1976, indictments must be returned within 60 days

of arrest or summons, for the year following within 45 days, and thereafter within 30 days. 18 U.S.C. §§ 3161(b) and (f), 3163(a). The problem is acute in a one-judge district where, if the judge is holding court in another part of the district, or is otherwise absent, the return of the indictment must await the later reappearance of the judge at the place where the grand jury is sitting.

A corresponding change has been made to that part of subdivision (f) which concerns the reporting of a "no bill," and to that part of subdivision (e) which concerns keeping an indictment secret.

The change in the third sentence of rule 6(f) is made so as to cover all situations in which by virtue of a pending complaint or information the defendant is in custody or released under some form of conditional release.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subd. (f) by the order of the United States Supreme Court of Apr. 26, 1976, effective Aug. 1, 1976, see section 1 of Pub. L. 94-349, July 8, 1976, 90 Stat. 822, set out as a note under section 3771 of this title.

CROSS REFERENCES

Additional jurors, summoning, see section 3321 of this title.

Bankruptcy investigation, presentation to grand jury, see section 3057 of this title.

Dismissal of grand jury, reindictment affected by statute of limitations, see sections 3288 and 3289 of this title.

Grand jurors, qualifications, fees and manner of drawing, see section 1861 et seq. of Title 28, Judiciary and Judicial Procedure.

Intimidation of grand jury, obstructing justice by, see sections 1503 and 1504 of this title.

Qualifications of grand jurors, generally, see section 1861 of Title 28, Judiciary and Judicial Procedure.

Unnecessary delay in presenting charge, dismissal for, see rule 48.

Rule 7. The Indictment and the Information

(a) Use of Indictment or Information

An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court.

(b) Waiver of Indictment

An offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

(c) Nature and Contents

(1) *In general.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) *Criminal forfeiture.* When an offense charged may result in a criminal forfeiture, the indictment or the information shall allege the extent of the interest or property subject to forfeiture.

(3) *Harmless error.* Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) Surplusage

The court on motion of the defendant may strike surplusage from the indictment or information.

(e) Amendment of Information

The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of Particulars

The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. This rule gives effect to the following provision of the Fifth Amendment to the Constitution of the United States: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *". An infamous crime has been defined as a crime punishable by death or by imprisonment in a penitentiary or at hard labor, *Ex parte Wilson*, 114 U.S. 417, 427, 5 S.Ct. 935, 29 L.Ed. 89; *United States* v. *Moreland*, 258 U.S. 433, 42 S.Ct. 368, 66 L.Ed. 700, 24 A.L.R. 992. Any sentence of imprisonment for a term of over one year may be served in a penitentiary, if so directed by the Attorney General, 18 U.S.C. former § 753f (now §§ 4082, 4083) (Commitment of persons by any court of the United States and the juvenile court of the District of Columbia; place of confinement; transfers). Consequently any offense punishable by imprisonment for a term of over one year is an infamous crime.

2. Petty offenses and misdemeanors for which no infamous punishment is prescribed may now be prosecuted by information, 18 U.S.C. former § 541 (now § 1) (Felonies and misdemeanors); *Duke* v. *United States*, 301 U.S. 492, 57 S. Ct. 835, 81 L. Ed. 1243.

3. For a discussion of the provision for waiver of indictment, see Note to Rule 7(b), infra.

4. Presentment is not included as an additional type of formal accusation, since presentments as a method of instituting prosecutions are obsolete, at least as concerns the Federal courts.

Note to Subdivision (b)

1. Opportunity to waive indictment and to consent to prosecution by information will be a substantial aid to defendants, especially those who, because of inability to give bail, are incarcerated pending action of the grand jury, but desire to plead guilty. This rule is par-

ticularly important in those districts in which considerable intervals occur between sessions of the grand jury. In many districts where the grand jury meets infrequently a defendant unable to give bail and desiring to plead guilty is compelled to spend many days, and sometimes many weeks, and even months, in jail before he can begin the service of his sentence, whatever it may be, awaiting the action of a grand jury. Homer Cummings, 29 A.B.A. Jour. 654–655; Vanderbilt, 29 A.B.A Jour. 376, 377; Robinson, 27 Jour. of the Am. Judicature Soc. 38, 45; Medalie, 4 Lawyers Guild R. (3)1, 3. The rule contains safeguards against improvident waivers.

The Judicial Conference of Senior Circuit Judges, in September 1941, recommended that "existing law or established procedure be so changed, that a defendant may waive indictment and plead guilty to an information filed by a United States attorney in all cases except capital felonies." Report of the Judicial Conference of Senior Circuit Judges (1941) 13. In September 1942 the Judicial Conference recommended that provision be made "for waiver of indictment and jury trial, so that persons accused of crime may not be held in jail needlessly pending trial." Id. (1942) 8.

Attorneys General of the United States have from time to time recommended legislation to permit defendants to waive indictment and to consent to prosecution by information. See Annual Report of the Attorney General of the United States (Mitchell) (1931) 3; Id. (Mitchell) (1932) 6; Id. (Cummings) (1933) 1, (1936) 2, (1937) 11, (1938) 9; Id. (Murphy) (1939) 7.

The Federal Juvenile Delinquency Act, 18 U.S.C. former §§ 921–929 (now §§ 5031, 5037), now permits a juvenile charged with an offense not punishable by death or life imprisonment to consent to prosecution by information on a charge of juvenile delinquency, 18 U.S.C. former § 922 (now §§ 5032, 5033).

2. On the constitutionality of this rule, see *United States* v. *Gill*, 55 F.2d 399, D.N.M., holding that the constitutional guaranty of indictment by grand jury may be waived by defendant. It has also been held that other constitutional guaranties may be waived by the defendant, e. g., *Patton* v. *United States*, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854, 70 A.L.R. 263 (trial by jury); *Johnson* v. *Zerbst*, 304 U.S. 458, 465, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357 (right of counsel); *Trono* v. *United States*, 199 U.S. 521, 534, 26 S.Ct. 121, 50 L.Ed. 292, 4 Ann. Cas. 773 (protection against double jeopardy); *United States* v. *Murdock*, 284 U.S. 141, 148, 52 S.Ct. 63, 76 L.Ed. 210, 82 A.L.R. 1376 (privilege against self-incrimination); *Diaz* v. *United States*, 223 U.S. 442, 450, 32 S.Ct. 250, 56 L.Ed. 500, Ann. Cas. 1913C, 1138 (right of confrontation).

Note to Subdivision (c)

1. This rule introduces a simple form of indictment, illustrated by Forms 1 to 11 in the Appendix of Forms. Cf. Rule 8(a) of the Federal Rules of Civil Procedure, 28 U.S.C. following § 2072. For discussion of the effect of this rule and a comparison between the present form of indictment and the simple form introduced by this rule, see Vanderbilt, 29 A.B.A. Jour. 376, 377; Homer Cummings, 29 A.B.A. Jour. 654, 655; Holtzoff, 3 F.R.D. 445, 448–449; Holtzoff, 12 Geo. Washington L. R. 119, 123–126; Medalie, 4 Lawyers Guild R. (3)1, 3.

2. The provision contained in the fifth sentence that it may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that he committed it by one or more specified means, is intended to eliminate the use of multiple counts for the purpose of alleging the commission of the offense by different means or in different ways. Cf. Federal Rules of Civil Procedure, Rule 8(e)(2), 28 U.S.C., Appendix.

3. The law at present regards citations to statutes or regulations as not a part of the indictment. A conviction may be sustained on the basis of a statute or regulation other than that cited. *Williams* v. *United States*, 168 U.S. 382, 389, 18 S. Ct. 92, 42 L. Ed. 509; *United States* v. *Hutcheson*, 312 U.S. 219, 229, 61 S. Ct. 463, 85 L. Ed. 788. The provision of the rule, in view of the many statutes and regulations, is for the benefit of the defendant and is not intended to cause a dismissal of the indictment, but simply to provide a means by which he can be properly informed without danger to the prosecution.

Note to Subdivision (d)

This rule introduces a means of protecting the defendant against immaterial or irrelevant allegations in an indictment or information, which may, however, be prejudicial. The authority of the court to strike such surplusage is to be limited to doing so on defendant's motion, in the light of the rule that the guaranty of indictment by a grand jury implies that an indictment may not be amended, *Ex parte Bain*, 121 U.S. 1, 7 S. Ct. 781, 30 L. Ed. 849. By making such a motion, the defendant would, however, waive his rights in this respect.

Note to Subdivision (e)

This rule continues the existing law that, unlike an indictment, an information may be amended, *Muncy* v. *United States*, 289 Fed. 780, C.C.A. 4th.

Note to Subdivision (f)

This rule is substantially a restatement of existing law on bills of particulars.

1966 AMENDMENT

The amendment to the first sentence eliminating the requirement of a showing of cause is designed to encourage a more liberal attitude by the courts toward bills of particulars without taking away the discretion which courts must have in dealing with such motions in individual cases. For an illustration of wise use of this discretion see the opinion by Justice Whittaker written when he was a district judge in *United States* v. *Smith*, 16 F.R.D. 372 (W.D. Mo. 1954).

The amendment to the second sentence gives discretion to the court to permit late filing of motions for bills of particulars in meritorious cases. Use of late motions for the purpose of delaying trial should not, of course, be permitted. The courts have not been agreed as to their power to accept late motions in the absence of a local rule or a previous order. See *United States* v. *Miller*, 217 F. Supp. 760 (E.D. Pa. 1963); *United States* v. *Taylor*, 25 F.R.D. 225 (E.D. N.Y. 1960); *United States* v. *Sterling*, 122 F. Supp. 81 (E.D. Pa. 1954) (all taking a limited view of the power of the court). But cf. *United States* v. *Brown*, 179 F. Supp. 893 (E.D. N.Y. 1959) (exercising discretion to permit an out of time motion).

1972 AMENDMENT

Subdivision (c)(2) is new. It is intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, § 1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, § 408(a)(2).

The Congress viewed the provisions of the Organized Crime Control Act of 1970 as reestablishing a limited common law criminal forfeiture. S. Rep. No. 91-617, 91st Cong., 1st Sess. 79–80 (1969). The legislative history of the Comprehensive Drug Abuse Prevention and Control Act of 1970 indicates a congressional purpose to have similar procedures apply to the forfeiture of profits or interests under that act. H. Rep. No. 91-1444 (part I), 91st Cong., 2d Sess. 81–85 (1970).

Under the common law, in a criminal forfeiture proceeding the defendant was apparently entitled to notice, trial, and a special jury finding on the factual issues surrounding the declaration of forfeiture which followed his criminal conviction. Subdivision (c)(2) provides for notice. Changes in rules 31 and 32 provide for a special jury finding and for a judgment authorizing the Attorney General to seize the interest or property forfeited.

GUAM

Inapplicability of requirement for indictment by grand jury in certain cases, to criminal prosecutions in the District Court of Guam, see section 1424 of Title 48, Territories and Insular Possessions.

PROSECUTIONS IN VIRGIN ISLANDS

Prosecutions in District Court of the Virgin Islands to be by information except such as may be required by local law to be by indictment by grand jury, see section 1615 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Arraignment, reading of indictment or information to defendant, see rule 10.

Arrest of judgment, indictment or information not charging offense, see rule 34.

Capital offense, copy of indictment or information furnished to person charged, see section 3432 of this title.

Dismissal of indictment or information—

By Attorney General or United States attorney, see rule 48.

Raising defenses or objections before trial, see rule 12.

Election, prejudicial joinder, see rule 14.

Food and Drug law violation, see form 11.

Impersonation of Federal Officer, see form 8.

Internal revenue violation, see form 5.

Interstate transportation of stolen motor vehicle, see form 6.

Judgment of acquittal, insufficiency of indictment or information, see rule 29.

Juvenile delinquents, proceeding against by information, see section 5032 of this title.

Mail fraud, see form 3.

Murder in the first degree, see forms 1 and 2.

Obtaining money by impersonation of Federal Officer, see form 9.

Presenting fraudulent claim against the United States, see form 10.

Receiving stolen motor vehicle, see form 7.

Removal proceedings, generally, see rule 40.

Sabotage, see form 4.

Setting aside or dismissing indictment, direct appeal from district court to Supreme Court, see section 3731 of this title.

Trial together of indictments or informations, see rule 13.

Waiver of indictment, see form 18.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants

Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially a restatement of existing law, 18 U.S.C. former § 557 (Indictments and presentments; joinder of charges).

Note to Subdivision (b)

The first sentence of the rule is substantially a restatement of existing law, 9 Edmunds, Cyclopedia of Federal Procedure, 2d Ed., 4116. The second sentence formulates a practice now approved in some circuits. *Caringella* v. *United States*, 78 F.2d 563, 567, C.C.A. 7th.

CROSS REFERENCES

Consolidation of indictments or informations, see rule 13.

Election of counts, see rule 14.

Rule 9. Warrant or Summons Upon Indictment or Information

(a) Issuance

Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court or, if the information or indictment charges a minor offense, before a United States magistrate. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court or, if the information or indictment charges a minor offense, before a United States magistrate at a stated time and place.

(c) Execution or Service; and Return

(1) *Execution or service.* The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or before a United States magistrate.

(2) *Return.* The officer executing a warrant shall make return thereof to the court or United States magistrate. At the request of the

attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.

(d) Remand to United States Magistrate for Trial of Minor Offense

If the information or indictment charges a minor offense and the return is to a judge of the district court, the case may be remanded to a United States magistrate for further proceedings in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(4), 89 Stat. 370; Dec. 12, 1975, Pub. L. 94-149, § 5, 89 Stat. 806.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. See Note to Rule 4, supra.

2. The provision of Rule 9(a) that a warrant may be issued on the basis of an information only if the latter is supported by oath is necessitated by the Fourth Amendment to the Constitution of the United States. See *Albrecht* v. *United States*, 273 U.S. 1, 5, 47 S. Ct. 250, 71 L. Ed. 505.

3. The provision of Rule 9(b)(1) that the amount of bail may be fixed by the court and endorsed on the warrant states a practice now prevailing in many districts and is intended to facilitate the giving of bail by the defendant and eliminate delays between the arrest and the giving of bail, which might ensue if bail cannot be fixed until after arrest.

1972 AMENDMENT

Subdivision (b) is amended to make clear that the person arrested shall be brought before a United States magistrate if the information or indictment charges a "minor offense" triable by the United States magistrate.

Subdivision (c) is amended to reflect the office of United States magistrate.

Subdivision (d) is new. It provides for a remand to the United States magistrate of cases in which the person is charged with a "minor offense." The magistrate can then proceed in accordance with rule 5 to try the case if the right to trial before a judge of the district court is waived.

1974 AMENDMENT

Rule 9 is revised to give high priority to the issuance of a summons unless a "valid reason" is given for the issuance of an arrest warrant. See a comparable provision in rule 4.

Under the rule, a summons will issue by the clerk unless the attorney for the government presents a valid reason for the issuance of an arrest warrant. Under the old rule, it has been argued that the court must issue an arrest warrant if one is desired by the attorney for the government. See authorities listed in Frankel, Bench Warrants Upon the Prosecutor's Demand: A View From the Bench, 71 Colum. L. Rev. 403, 410 n. 25 (1971). For an expression of the view that this is undesirable policy, see Frankel, *supra*, pp. 410-415

A summons may issue if there is an information supported by oath. The indictment itself is sufficient to establish the existence of probable cause. See C. Wright, Federal Practice and Procedure: Criminal § 151 (1969); 8 J. Moore, Federal Practice ¶ 9.02 [2] at p. 9-4 (2d ed.) Cipes (1969); *Giordenello* v. *United States*, 357 U.S. 480, 78 S.Ct. 1245, 2 L. Ed. 2d 1503 (1958). This is not necessarily true in the case of an information. See C. Wright, *supra*, § 151; 8 J. Moore, *supra*, ¶ 9.02. If the government requests a warrant rather than a summons, good practice would obviously require the judge to satisfy himself that there is probable cause. This may appear from the information or from an affidavit filed with the information. Also a defendant can, at a proper time, challenge an information issued without probable cause.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 9 of the Federal Rules of Criminal Procedure is closely related to Rule 4. Rule 9 deals with arrest procedures after an information has been filed or an indictment returned. The present rule gives the prosecutor the authority to decide whether a summons or a warrant shall issue.

The Supreme Court's amendments to Rule 9 parallel its amendments to Rule 4. The basic change made in Rule 4 is also made in Rule 9.

B. Committee Action. For the reasons set forth above in connection with Rule 4, the Committee endorses and accepts the basic change in Rule 9. The Committee made changes in Rule 9 similar to the changes it made in Rule 4.

1975 AMENDMENT

Subd. (b)(1). Pub. L. 94-149 substituted reference to "rule 4(c)(1)" for "rule 4(b)(1)".

Subd. (c)(1). Pub. L. 94-149 substituted reference to "rule 4(d)(1), (2), and (3)" for "rule 4(c)(1), (2), and (3)".

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Commitment to another district, see rule 40.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment of information before he is called upon to plead.

NOTES OF ADVISORY COMMITTEE ON RULES

1. The first sentence states the prevailing practice.

2. The requirement that the defendant shall be given a copy of the indictment or information before he is called upon to plead, contained in the second sentence, is new.

3. Failure to comply with arraignment requirements has been held not to be jurisdictional, but a mere technical irregularity not warranting a reversal of a conviction, if not raised before trial, *Garland* v. *State of Washington*, 232 U.S. 642, 34 S. Ct. 456, 58 L. Ed. 772.

CROSS REFERENCES

Assignment of counsel in preliminary proceedings, see note under rule 44.

Bill of particulars before arraignment, see rule 7.

Rule 11. Pleas

(a) Alternatives

A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Nolo Contendere

A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interst of the public in the effective administration of justice.

(c) Advice to Defendant

Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.

(d) Insuring That the Plea Is Voluntary

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

(e) Plea Agreement Procedure

(1) *In General.* The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) *Notice of Such Agreement.* If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) *Acceptance of a Plea Agreement.* If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) *Rejection of a Plea Agreement.* If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) *Time of Plea Agreement Procedure.* Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) *Inadmissibility of Pleas, Offers of Pleas, and Related Statements.* Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining Accuracy of Plea

Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings

A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(5)-(10), 89 Stat. 371, 372.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule is substantially a restatement of existing law and practice, 18 U.S.C. former § 564 (Standing mute); *Fogus* v. *United States*, 34 F.2d 97, C.C.A. 4th (duty of court to ascertain that plea of guilty is intelligently and voluntarily made).

2. The plea of nolo contendere has always existed in the Federal courts, *Hudson* v. *United States*, 272 U.S. 451, 47 S. Ct. 127, 71 L. Ed. 347; *United States* v. *Norris*, 281 U.S. 619, 50 S. Ct. 424, 74 L. Ed. 1076. The use of the plea is recognized by the Probation Act, 18 U.S.C. former § 724 (now § 3651). While at times criticized as theoretically lacking in logical basis, experience has shown that it performs a useful function from a practical standpoint.

1966 AMENDMENT

The great majority of all defendants against whom indictments or informations are filed in the federal courts plead guilty. Only a comparatively small number go to trial. See United States Attorneys Statistical Report, Fiscal Year 1964, p. 1. The fairness and adequacy of the procedures on acceptance of pleas of guilty are of vital importance in according equal justice to all in the federal courts.

Three changes are made in the second sentence. The first change makes it clear that before accepting either a plea of guilty or nolo contendere the court must determine that the plea is made voluntarily with understanding of the nature of the charge. The second change expressly requires the court to address the defendant personally in the course of detemining that the plea is made voluntarily and with understanding of the nature of the charge. The reported cases reflect some confusion over this matter. Compare *United States* v. *Diggs*, 304 F. 2d 929 (6th Cir. 1962); *Domenica* v. *United States*, 292 F. 2d 483 (1st Cir. 1961); *Gundlach* v. *United States*, 262 F. 2d 72 (4th Cir. 1958), cert. den., 360 U.S. 904 (1959); and *Julian* v. *United States*, 236 F. 2d 155 (6th Cir. 1956), which contain the implication that personal interrogation of the defendant is the better practice even when he is represented by counsel, with *Meeks* v. *United States*, 298 F. 2d 204 (5th Cir. 1962); *Nunley* v. *United States*, 294 F. 2d 579 (10th Cir. 1961), cert. den., 368 U.S. 991 (1962); and *United States* v. *Von der Heide*, 169 F. Supp. 560 (D.D.C. 1959).

The third change in the second sentence adds the words "and the consequences of his plea" to state what clearly is the law. See, e.g., *Von Moltke* v. *Gillies*, 332 U.S. 708, 724 (1948); *Kerchevel* v. *United States*, 274 U.S. 220, 223 (1927); *Munich* v. *United States*, 337 F. 2d 356 (9th Cir. 1964); *Pilkington* v. *United States*, 315 F. 2d 204 (4th Cir. 1963); *Smith* v. *United States*, 324 F. 2d 436 (D.C. Cir. 1963); but cf. *Marvel* v. *United States*, 335 F. 2d 101 (5th Cir. 1964).

A new sentence is added at the end of the rule to impose a duty on the court in cases where the defendant pleads guilty to satisfy itself that there is a factual basis for the plea before entering judgment. The court should satisfy itself, by inquiry of the defendant or the attorney for the government, or by examining the presentence report, or otherwise, that the conduct which the defendant admits constitutes the offense charged in the indictment or information or an offense included therein to which the defendant has pleaded guilty. Such inquiry should, e.g., protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge. For a similar requirement see Mich. Stat. Ann. § 28.1058 (1954); Mich. Sup. Ct. Rule 35A; *In re Valle*, 364 Mich. 471, 110 N.W. 2d 673 (1961); *People* v. *Barrows*, 358 Mich. 267, 99 N.W. 2d 347 (1959); *People* v. *Bumpus*, 355 Mich. 374, 94 N.W. 2d 854 (1959); *People* v. *Coates*, 337 Mich. 56, 59 N.W. 2d 83 (1953). See also *Stinson* v. *United States*, 316 F. 2d 554 (5th Cir. 1963). The normal consequence of a determination that there is not a factual basis for the plea would be for the court to set aside the plea and enter a plea of not guilty.

For a variety of reasons it is desirable in some cases to permit entry of judgment upon a plea of nolo contendere without inquiry into the factual basis for the plea. The new third sentence is not, therefore, made applicable to pleas of nolo contendere. It is not intended by this omission to reflect any view upon the effect of a plea of nolo contendere in relation to a plea of guilty. That problem has been dealt with by the courts. See e.g., *Lott* v. *United States*, 367 U.S. 421, 426 (1961).

1974 AMENDMENT

The amendments to rule 11 are designed to achieve two principal objectives:

(1) Subdivision (c) prescribes the advice which the court must give to insure that the defendant who pleads guilty has made an informed plea.

(2) Subdivision (e) provides a plea agreement procedure designed to give recognition to the propriety of plea discussions; to bring the existence of a plea agreement out into the open in court; and to provide methods for court acceptance or rejection of a plea agreement.

Other less basic changes are also made. The changes are discussed in the order in which they appear in the rule.

Subdivision (b) retains the requirement that the defendant obtain the consent of the court in order to plead nolo contendere. It adds that the court shall, in deciding whether to accept the plea, consider the views of the prosecution and of the defense and also the larger public interest in the administration of criminal justice.

Although the plea of nolo contendere has long existed in the federal courts, *Hudson* v. *United States*, 272 U.S. 451, 47 S.Ct. 127, 71 L.Ed. 347 (1926), the desirability of the plea has been a subject of disagreement. Compare Lane-Reticker, Nolo Contendere in North Carolina, 34 N. C.L.Rev. 280, 290-291 (1956), with Note. The Nature and Consequences of the Plea of Nolo Contendere, 33 Neb.L.Rev. 428, 434 (1954), favoring the plea. The American Bar Association Project on Standards for Criminal Justice takes the position that "the case for the nolo plea is not strong enough to justify a minimum standard supporting its use," but because "use of the plea contributes in some degree to the avoidance of unnecessary trials" it does not proscribe use of the plea. ABA, Standards Relating to Pleas of Guilty § 1.1(a) Commentary at 16 (Approved Draft, 1968).

A plea of nolo contendere is, for purposes of punishment, the same as the plea of guilty. See discussion of the history of the nolo plea in North Carolina v. Alford, 400 U.S. 25, 35-36 n. 8, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). Note, The Nature and Consequences of the Plea of Nolo Contendere, 33 Neb.L.Rev. 428, 430 (1954). A judgment upon the plea is a conviction and may be used to apply multiple offender statutes.

Lenvin and Meyers, Nolo Contendere: Its Nature and Implications, 51 Yale L.J. 1255, 1265 (1942). Unlike a plea of guilty, however, it cannot be used against a defendant as an admission in a subsequent criminal or civil case. 4 Wigmore § 1066(4), at 58 (3d ed. 1940, Supp. 1970); Rules of Evidence for United States Courts and Magistrates, rule 803(22) (Nov. 1971). See Lenvin and Meyers, Nolo Contendere: Its Nature and Implications, 51 Yale L.J. 1255 (1942); ABA Standards Relating to Pleas of Guilty §§ 1.1(a) and (b), Commentary at 15-18 (Approved Draft, 1968).

The factors considered relevant by particular courts in determining whether to permit the plea of nolo contendere vary. Compare *United States* v. *Bagliore*, 182 F.Supp. 714, 716 (E.D.N.Y. 1960), where the view is taken that the plea should be rejected unless a compelling reason for acceptance is established, with *United States* v. *Jones*, 119 F.Supp. 288, 290 (S.D.Cal. 1954), where the view is taken that the plea should be accepted in the absence of a compelling reason to the contrary.

A defendant who desires to plead nolo contendere will commonly want to avoid pleading guilty because the plea of guilty can be introduced as an admission in subsequent civil litigation. The prosecution may oppose the plea of nolo contendere because it wants a definite resolution of the defendant's guilty or innocence either for correctional purposes or for reasons of subsequent litigation. ABA Standards Relating to Pleas of Guilty § 1.1(b) Commentary at 16-18 (Approved Draft, 1968). Under subdivision (b) of the new rule the balancing of the interests is left to the trial judge, who is mandated to take into account the larger public interest in the effective administration of justice.

Subdivision (c) prescribes the advice which the court must give to the defendant as a prerequisite to the acceptance of a plea of guilty. The former rule required that the court determine that the plea was made with "understanding of the nature of the charge and the consequences of the plea." The amendment identifies more specifically what must be explained to the defendant and also codifies, in the rule, the requirements of *Boykin* v. *Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), which held that a defendant must be apprised of the fact that he relinquishes certain constitutional rights by pleading guilty.

Subdivision (c) retains the requirement that the court address the defendant personally. See *McCarthy* v. *United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969). There is also an amendment to rule 43 to make clear that a defendant must be in court at the time of the plea.

Subdivision (c)(1) retains the current requirement that the court determine that the defendant understands the nature of the charge. This is a common requirement. See ABA Standards Relating to Pleas of Guilty § 1.4(a) (Approved Draft, 1968); Illinois Supreme Court Rule 402(a)(1) (1970), Ill.Rev.Stat. 1973, ch. 110A, § 402(a)(1). The method by which the defendant's understanding of the nature of the charge is determined may vary from case to case, depending on the complexity of the circumstances and the particular defendant. In some cases, a judge may do this by reading the indictment and by explaining the elements of the offense to the defendants. Thompson, The Judge's Responsibility on a Plea of Guilty 62 W.Va.L.Rev. 213, 220 (1960); Resolution of Judges of U.S. District Court for D.C., June 24, 1959.

Former rule 11 required the court to inform the defendant of the "consequences of the plea." Subdivision (c)(2) changes this and requires instead that the court inform the defendant of and determine that he understands "the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered." The objective is to insure that a defendant knows what minimum sentence the judge must impose and what maximum sentence the judge may impose. This information is usually readily ascertainable from the face of the statute defining the crime, and thus it is feasible for the judge to know specifically what to tell the defendant. Giving this advice tells a defendant the shortest mandatory sentence and also the longest possible sentence for the offense to which he is pleading guilty.

It has been suggested that it is desirable to inform a defendant of additional consequences which might follow from his plea of guilty. *Durant* v. *United States*, 410 F.2d 689 (1st Cir. 1969), held that a defendant must be informed of his ineligibility for parole. *Trujillo* v. *United States*, 377 F.2d 266 (5th Cir. 1967), cert. denied 389 U.S. 899, 88 S.Ct. 224, 19 L.Ed.2d 221 (1967), held that advice about eligibility for parole is not required. It has been suggested that a defendant be advised that a jury might find him guilty only of a lesser included offense. C. Wright, Federal Practice and Procedure: Criminal § 173 at 374 (1969). See contra Dorrough v. United States, 385 F.2d 887 (5th Cir. 1967). The ABA Standards Relating to Pleas of Guilty § 1.4(c)(iii) (Approved Draft, 1968) recommend that the defendant be informed that he may be subject to additional punishment if the offense charged is one for which a different or additional punishment is authorized by reason of the defendant's previous conviction.

Under the rule the judge is not required to inform a defendant about these matters, though a judge is free to do so if he feels a consequence of a plea of guilty in a particular case is likely to be of real significance to the defendant. Currently, certain consequences of a plea of guilty, such as parole eligibility, may be so complicated that it is not feasible to expect a judge to clearly advise the defendant. For example, the judge may impose a sentence under 18 U.S.C. § 4202 making the defendant eligible for parole when he has served one third of the judicially imposed maximum; or, under 18 U.S.C. § 4208(a)(1), making parole eligibility after a specified period of time less than one third of the maximum; or, under 18 U.S.C. § 4208(a)(2), leaving eligibility to the discretion of the parole board. At the time the judge is required to advise the defendant of the consequences of his plea, the judge will usually not have seen the presentence report and thus will have no basis for giving a defendant any very realistic advice as to when he might be eligible for parole. Similar complications exist with regard to other, particularly collateral, consequences of a plea of guilty in a given case.

Subdivisions (c)(3) and (4) specify the constitutional rights that the defendant waives by a plea of guilty or nolo contendere. These subdivisions are designed to satisfy the requirements of understanding waiver set forth in *Boykin* v. *Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Subdivision (c)(3) is intended to require that the judge inform the defendant and determine that he understands that he waives his fifth amendment rights. The rule takes the position that the defendant's right not to incriminate himself is best explained in terms of his right to plead not guilty and to persist in that plea if it has already been made. This is language identical to that adopted in Illinois for the same purpose. See Illinois Supreme Court Rule 402(a)(3) (1970), Ill. Rev.Stat. 1973, ch. 110A, § 402(a)(3).

Subdivision (c)(4) assumes that a defendant's right to have his guilt proved beyond a reasonable doubt and the right to confront his accusers are best explained by indicating that the right to trial is waived. Specifying that there will be no future trial of any kind makes this fact clear to those defendants who, though knowing they have waived trial by jury, are under the mistaken impression that some kind of trial will follow. Illinois has recently adopted similar language. Illinois Supreme Court Rule 402(a)(4) (1970), Ill. Rev.Stat. 1973, ch. 110A, § 402(a)(4). In explaining to a defendant that he waives his right to trial, the judge may want to explain some of the aspects of trial such as the right to confront witnesses, to subpoena witnesses, to testify in his own behalf, or, if he chooses, not to testify. What is required, in this re-

spect, to conform to *Boykin* is left to future case-law development.

Subdivision (d) retains the requirement that the court determine that a plea of guilty or nolo contendere is voluntary before accepting it. It adds the requirement that the court also inquire whether the defendant's willingness to plead guilty or nolo contendere results from prior plea discussions between the attorney for the government and the defendant or his attorney. See *Santobello* v. *New York*, 404 U.S. 257, 261-262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971): "The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of those promises must in some way be made known." Subdivisions (d) and (e) afford the court adequate basis for rejecting an improper plea agreement induced by threats or inappropriate promises.

The new rule specifies that the court personally address the defendant in determining the voluntariness of the plea.

By personally interrogating the defendant, not only will the judge be better able to ascertain the plea's voluntariness, but he will also develop a more complete record to support his determination in a subsequent post-conviction attack. * * * Both of these goals are undermined in proportion to the degree the district judge resorts to "assumptions" not based upon recorded responses to his inquiries. *McCarthy* v. *United States*, 394 U.S. 459, 466, 467, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

Subdivision (e) provides a plea agreement procedure. In doing so it gives recognition to the propriety of plea discussions and plea agreements provided that they are disclosed in open court and subject to acceptance or rejection by the trial judge.

Although reliable statistical information is limited, one recent estimate indicated that guilty pleas account for the disposition of as many as 95% of all criminal cases. ABA Standards Relating to Pleas of Guilty, pp. 1-2 (Approved Draft, 1968). A substantial number of these are the result of plea discussions. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 9 (1967); D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial 3 (1966); L. Weinreb, Criminal Process 437 (1969); Note, Guilty Plea Bargaining: Compromises by Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865 (1964).

There is increasing acknowledgement of both the inevitability and the propriety of plea agreements. See, e.g., ABA Standards Relating to Pleas of Guilty § 3.1 (Approved Draft, 1968); Illinois Supreme Court Rule 402 (1970), Ill.Rev.Stat. 1973, ch. 110A, § 402.

In *Brady* v. *United States*, 397 U.S. 742, 752-753, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970), the court said:

Of course, that the prevalence of guilty pleas is explainable does not necessarily validate those pleas or the system which produces them. But we cannot hold that it is unconstitutional for the State to extend a benefit to a defendant who in turn extends a substantial benefit to the State and who demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary.

In *Santobello* v. *New York*, 404 U.S. 257, 260, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971), the court said:

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargaining," is an essential component of the administration of justice. Properly administered, it is to be encouraged.

Administratively, the criminal justice system has come to depend upon pleas of guilty and, hence, upon plea discussions. See, e.g., President's Commission on Law Enforcement and Administration of Justice, Task Force Report. The Courts 9 (1967); Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865 (1964). But expediency is not the basis for recognizing the propriety of a plea agreement practice. Properly implemented, a plea agreement procedure is consistent with both effective and just administration of the criminal law. *Santobello* v. *New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427. This is the conclusion reached in the ABA Standards Relating to Pleas of Guilty § 1.8 (Approved Draft, 1968); the ABA Standards Relating to The Prosecution Function and The Defense Function pp. 243-253 (Approved Draft, 1971); and the ABA Standards Relating to the Function of the Trial Judge, § 4.1 (App.Draft, 1972). The Supreme Court of California recently recognized the propriety of plea bargaining. See *People* v. *West*, 3 Cal.3d 595, 91 Cal.Rptr. 385, 477 P.2d 409 (1970). A plea agreement procedure has recently been decided in the District of Columbia Court of General Sessions upon the recommendation of the United States Attorney. See 51 F.R.D. 109 (1971).

Where the defendant by his plea aids in insuring prompt and certain application of correctional measures, the proper ends of the criminal justice system are furthered because swift and certain punishment serves the ends of both general deterrence and the rehabilitation of the individual defendant. Cf. Note, The Influence of the Defendant's Plea on Judicial Determination of Sentence, 66 Yale L.J. 204, 211 (1956). Where the defendant has acknowledged his guilt and shown a willingness to assume responsibility for his conduct, it has been thought proper to recognize this in sentencing. See also ALI, Model Penal Code § 7.01 (P.O.D. 1962); NPPA Guides for Sentencing (1957). Granting a charge reduction in return for a plea of guilty may give the sentencing judge needed discretion, particularly where the facts of a case do not warrant the harsh consequences of a long mandatory sentence or collateral consequences which are unduly severe. A plea of guilty avoids the necessity of a public trial and may protect the innocent victim of a crime against the trauma of direct and cross-examination.

Finally, a plea agreement may also contribute to the successful prosecution of other more serious offenders. See D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial, chs. 2 and 3 (1966); Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865, 881 (1964).

Where plea discussions and agreements are viewed as proper, it is generally agreed that it is preferable that the fact of the plea agreement be disclosed in open court and its propriety be reviewed by the trial judge.

We have previously recognized plea bargaining as an ineradicable fact. Failure to recognize it tends not to destroy it but to drive it underground. We reiterate what we have said before: that when plea bargaining occurs it ought to be spread on the record [The Bench Book prepared by the Federal Judicial Center for use by United States District Judges now suggests that the defendant be asked by the court "if he believes there is any understanding or if any predictions have been made to him concerning the sentence he will receive." Bench Book for United States District Judges, Federal Judicial Center (1969) at 1.05.3.] and publicly disclosed. *United States* v. *Williams*, 407 F.2d 940 (4th Cir. 1969). * * * In the future we think that the district judges should not only make the general inquiry under Rule 11 as to whether the plea of guilty has been coerced or induced by promises, but should specifically inquire of counsel whether plea bargaining has occurred. Logically the general inquiry should elicit information about plea bargaining, but it seldom has in the past. *Raines* v. *United States*, 423 F.2d 526, 530 (4th Cir. 1970).

In the past, plea discussions and agreements have occurred in an informal and largely invisible manner. Enker, Perspectives on Plea Bargaining, in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 108, 115 (1967). There has often been a ritual of denial that any promises have been made, a ritual in which judges, prosecutors, and defense counsel have participated. ABA Standards Relating to Pleas of Guilty

§ 3.1, Commentary at 60–69 (Approved Draft 1968); Task Force Report: The Courts 9. Consequently, there has been a lack of effective judicial review of the propriety of the agreements, thus increasing the risk of real or apparent unfairness. See ABA Standards Relating to Pleas of Guilty § 3.1, Commentary at 60 et seq.; Task Force Report: The Courts 9–13.

The procedure described in subdivision (e) is designed to prevent abuse of plea discussions and agreements by providing appropriate and adequate safeguards.

Subdivision (e)(1) specifies that the "attorney for the government and the attorney for the defendant or the defendant when acting pro se may" participate in plea discussions. The inclusion of "the defendant when acting pro se" is intended to reflect the fact that there are situations in which a defendant insists upon representing himself. It may be desirable that an attorney for the government not enter plea discussions with a defendant personnally. If necessary, counsel can be appointed for purposes of plea discussions. (Subdivision (d) makes it mandatory that the court inquire of the defendant whether his plea is the result of plea discussions between him and the attorney for the government. This is intended to enable the court to reject an agreement reached by an unrepresented defendant unless the court is satisfied that acceptance of the agreement adequately protects the rights of the defendant and the interests of justice.) This is substantially the position of the ABA Standards Relating to Pleas of Guilty § 3.1(a), Commentary at 65–66 (Approved Draft, 1968). Apparently, it is the practice of most prosecuting attorneys to enter plea discussions only with defendant's counsel. Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865, 904 (1964). Discussions without benefit of counsel increase the likelihood that such discussions may be unfair. Some courts have indicated that plea discussions in the absence of defendant's attorney may be constitutionally prohibited. See *Anderson* v. *North Carolina*, 221 F.Supp. 930, 935 (W.D.N.C.1963); *Shape* v. *Sigler*, 230 F.Supp. 601, 606 (D.Neb. 1964).

Subdivision (e)(1) is intended to make clear that there are four possible concessions that may be made in a plea agreement. First, the charge may be reduced to a lesser or related offense. Second, the attorney for the government may promise to move for dismissal of other charges. Third, the attorney for the government may agree to recommend or not oppose the imposition of a particular sentence. Fourth, the attorneys for the government and the defense may agree that a given sentence is an appropriate disposition of the case. This is made explicit in subdivision (e)(2) where reference is made to an agreement made "in the expectation that a specific sentence will be imposed." See Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865, 898 (1964).

Subdivision (e)(1) prohibits the court from participating in plea discussions. This is the position of the ABA Standards Relating to Pleas of Guilty § 3.3(a) (Approved Draft, 1968).

It has been stated that it is common practice for a judge to participate in plea discussions. See D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial 32–52, 78–104 (1966); Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865, 891, 905 (1964).

There are valid reasons for a judge to avoid involvement in plea discussions. It might lead the defendant to believe that he would not receive a fair trial, were there a trial before the same judge. The risk of not going along with the disposition apparently desired by the judge might induce the defendant to plead guilty, even if innocent. Such involvement makes it difficult for a judge to objectively assess the voluntariness of the plea. See ABA Standards Relating to Pleas of Guilty § 3.3(a), Commentary at 72–74 (Approved Draft, 1968); Note, Guilty Plea Bargaining: Compromises By Prosecutors To Secure Guilty Pleas, 112 U.Pa.L.Rev. 865, 891–892 (1964); Comment, Official Inducements to Plead Guilty: Suggested Morals for a Marketplace, 32 U.Chi.L.Rev. 167, 180–183 (1964); Informal Opinion No. 779 ABA Professional Ethics Committee ("A judge should not be a party to advance arrangements for the determination of sentence, whether as a result of a guilty plea or a finding of guilt based on proof."), 51 A.B.A.J. 444 (1965). As has been recently pointed out:

The unequal positions of the judge and the accused, one with the power to commit to prison and the other deeply concerned to avoid prison, as once raise a question of fundamental fairness. When a judge becomes a participant in plea bargaining he brings to bear the full force and majesty of his office. His awesome power to impose a substantially longer or even maximum sentence in excess of that proposed is present whether referred to or not. A defendant needs no reminder that if he rejects the proposal, stands upon his right to trial and is convicted, he faces a significantly longer sentence. *United States ex rel. Elksnis* v. *Gilligan*, 256 F.Supp. 244, 254 (S.D.N.Y. 1966).

On the other hand, one commentator has taken the position that the judge may be involved in discussions either after the agreement is reached or to help elicit facts and an agreement. Enker, Perspectives on Plea Bargaining, in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 108, 117–118 (1967).

The amendment makes clear that the judge should not participate in plea discussions leading to a plea agreement. It is contemplated that the judge may participate in such discussions as may occur when the plea agreement is disclosed in open court. This is the position of the recently adopted Illinois Supreme Court Rule 402(d)(1) (1970), Ill.Rev.Stat. 1973, ch. 110A, § 402(d)(1). As to what may constitute "participation," contrast *People* v. *Earegood*, 12 Mich.App. 256, 268–269, 162 N.W.2d 802, 809–810 (1968), with *Kruse* v. *State*, 47 Wis.2d 460, 177 N.W.2d 322 (1970).

Subdivision (e)(2) provides that the judge shall require the disclosure of any plea agreement in open court. In *People* v. *West*, 3 Cal.3d 595, 91 Cal.Rptr. 385, 477 P.2d 409 (1970), the court said:

[T]he basis of the bargain should be disclosed to the court and incorporated in the record. * * *

Without limiting that court to those we set forth, we note four possible methods of incorporation: (1) the bargain could be stated orally and recorded by the court reporter, whose notes then must be preserved or transcribed; (2) the bargain could be set forth by the clerk in the minutes of the court; (3) the parties could file a written stipulation stating the terms of the bargain; (4) finally, counsel or the court itself may find it useful to prepare and utilize forms for the recordation of plea bargains. 91 Cal.Rptr. 393, 394; 477 P.2d at 417, 418.

The District of Columbia Court of General Sessions is using a "Sentence-Recommendation Agreement" form.

Upon notice of the plea agreement, the court is given the option to accept or reject the agreement or defer its decision until receipt of the presentence report.

The judge may, and often should, defer his decision until he examines the presentence report. This is made possible by rule 32 which allows a judge, with the defendant's consent, to inspect a presentence report to determine whether a plea agreement should be accepted. For a discussion of the use of conditional plea acceptance, see ABA Standards Relating to Pleas of Guilty § 3.3(b), Commentary at 74–76, and Supplement, Proposed Revisions § 3.3(b) at 2–3 (Approved Draft, 1968); Illinois Supreme Court Rule 402(d)(2) (1970), Ill.Rev. Stat. 1973, ch. 110A, § 402(d)(2).

The plea agreement procedure does not attempt to define criteria for the acceptance or rejection of a plea agreement. Such a decision is left to the discretion of the individual trial judge.

Subdivision (e)(3) makes is mandatory, if the court decides to accept the plea agreement, that it inform the defendant that it will embody in the judgment

and sentence the disposition provided in the plea agreement, or one more favorable to the defendant. This serves the purpose of informing the defendant immediately that the agreement will be implemented.

Subdivision (e)(4) requires the court, if it rejects the plea agreement, to inform the defendant of this fact and to advise the defendant personally, in open court, that the court is not bound by the plea agreement. The defendant must be afforded an opportunity to withdraw his plea and must be advised that if he persists in his guilty plea or plea of nolo contendere, the disposition of the case may be less favorable to him than that contemplated by the plea agreement. That the defendant should have the opportunity to withdraw his plea if the court rejects the plea agreement is the position taken in ABA Standards Relating to Pleas of Guilty, Supplement, Proposed Revisions § 2.1(a)(ii)(5) (Approved Draft, 1968). Such a rule has been adopted in Illinois. Illinois Supreme Court Rule 402(d)(2) (1970), Ill.Rev.Stat. 1973, ch. 110A, § 402(d)(2).

If the court rejects the plea agreement and affords the defendant the opportunity to withdraw the plea, the court is not precluded from accepting a guilty plea from the same defendant at a later time, when such plea conforms to the requirements of rule 11.

Subdivision (e)(5) makes it mandatory that, except for good cause shown, the court be notified of the existence of a plea agreement at the arraignment or at another time prior to trial fixed by the court. Having a plea entered at this stage provides a reasonable time for the defendant to consult with counsel and for counsel to complete any plea discussions with the attorney for the government. ABA Standards Relating to Pleas of Guilty § 1.3 (Approved Draft, 1968). The objective of the provision is to make clear that the court has authority to require a plea agreement to be disclosed sufficiently in advance of trial so as not to interfer with the efficient scheduling of criminal cases.

Subdivision (e)(6) is taken from rule 410, Rules of Evidence for United States Courts and Magistrates (Nov. 1971). See Advisory Committee Note thereto. See also the ABA Standards Relating to Pleas of Guilty § 2.2 (Approved Draft, 1968); Illinois Supreme Court Rule 402(f) (1970), Ill. Rev. Stat. 1973, ch. 110A, § 402(f).

Subdivision (f) retains the requirement of old rule 11 that the court should not enter judgment upon a plea of guilty without making such an inquiry as will satisfy it that there is a factual basis for the plea. The draft does not specify that any particular type of inquiry be made. See *Santobello* v. *New York*, 404 U.S. 257, 261, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); "Fed.Rule Crim.Proc. 11, governing pleas in federal courts, now makes clear that the sentencing judge must develop, on the record, the factual basis for the plea, as, for example, by having the accused describe the conduct that gave rise to the charge." An inquiry might be made of the defendant, of the attorneys for the government and the defense, of the presentence report when one is available, or by whatever means is appropriate in a specific case. This is the position of the ABA Standards Relating to Pleas of Guilty § 1.6 (Approved Draft, 1968). Where inquiry is made of the defendant himself it may be desirable practice to place the defendant under oath. With regard to a determination that there is a factual basis for a plea of guilty to a "lessor or related offense," compare ABA Standards Relating to Pleas of Guilty § 3.1(b)(ii), Commentary at 67–68 (Approved Draft, 1968), with ALI, Model Penal Code § 1.07(5) (P.O.D. 1962). The rule does not speak directly to the issue of whether a judge may accept a plea of guilty where there is a factual basis for the plea but the defendant asserts his innocence. *North Carolina* v. *Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). The procedure in such case would seem to be to deal with this as a plea of nolo contendere, the acceptance of which would depend upon the judge's decision as to whether acceptance of the plea is consistent with "the interest of the public in the effective administration of justice" [new rule 11(b)]. The defendant who asserts his innocence while pleading guilty or nolo contendere is often difficult to deal with in a correctional setting, and it may therefore be preferable to resolve the issue of guilt or innocence at the trial stage rather than leaving that issue unresolved, thus complicating subsequent correctional decisions. The rule is intended to make clear that a judge may reject a plea of nolo contendere and require the defendant either to plead not guilty or to plead guilty under circumstances in which the judge is able to determine that the defendant is in fact guilty of the crime to which he is pleading guilty.

Subdivision (g) requires that a verbatim record be kept of the proceedings. If there is a plea of guilty or nolo contendere, the record must include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea and the plea agreement, and the inquiry into the accuracy of the plea. Such a record is important in the event of a post-conviction attack. ABA Standards Relating to Pleas of Guilty § 1.7 (Approved Draft, 1968). A similar requirement was adopted in Illinois: Illinois Supreme Court Rule 402(e) (1970), Ill.Rev.Stat. 1973, ch. 110A, § 402(e).

Notes of Committee on the Judiciary, House Report No. 94-247

A. Amendments Proposed by the Supreme Court. Rule 11 of the Federal Rules of Criminal Procedure deals with pleas. The Supreme Court has proposed to amend this rule extensively.

Rule 11 provides that a defendant may plead guilty, not guilty, or nolo contendere. The Supreme Court's amendments to Rule 11(b) provide that a nolo contendere plea "shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice."

The Supreme Court amendments to Rule 11(c) spell out the advise that the court must give to the defendant before accepting the defendant's plea of guilty or nolo contendere. The Supreme Court amendments to Rule 11(d) set forth the steps that the court must take to insure that a guilty or nolo contendere plea has been voluntarily made.

The Supreme Court amendments to Rule 11(e) establish a plea agreement procedure. This procedure permits the parties to discuss disposing of a case without a trial and sets forth the type of agreements that the parties can reach concerning the disposition of the case. The procedure is not mandatory; a court is free not to permit the parties to present plea agreements to it.

The Supreme Court amendments to Rule 11(f) require that the court, before entering judgment upon a plea of guilty, satisfy itself that "there is a factual basis for the plea." The Supreme Court amendments to Rule 11(g) require that a verbatim record be kept of the proceedings at which the defendant enters a plea.

B. Committee Action. The proposed amendments to Rule 11, particularly those relating to the plea negotiating procedure, have generated much comment and criticism. No observer is entirely happy that our criminal justice system must rely to the extent it does on negotiated dispositions of cases. However, crowded court dockets make plea negotiating a fact that the Federal Rules of Criminal Procedure should contend with. The Committee accepts the basic structure and provisions of Rule 11(e).

Rule 11(e) as proposed permits each federal court to decide for itself the extent to which it will permit plea negotiations to be carried on within its own jurisdiction. No court is compelled to permit any plea negotiations at all. Proposed Rule 11(e) regulates plea negotiations and agreements if, and to the extent that, the court permits such negotiations and agreements. [Proposed Rule 11(e) has been criticized by some federal judges who read it to mandate the court to permit plea negotiations and the reaching of plea agreements. The Advisory Committee stressed during its testimony

that the rule does not mandate that a court permit any form of plea agreement to be presented to it. See, e.g., the remarks of United States Circuit Judge William H. Webster in Hearings II, at 196. See also the exchange of correspondence between Judge Webster and United States District Judge Frank A. Kaufman in Hearings II, at 289-90.]

Proposed Rule 11(e) contemplates 4 different types of plea agreements. First, the defendant can plead guilty or nolo contendere in return for the prosecutor's reducing the charge to a less serious offense. Second, the defendant can plead guilty or nolo contendere in return for the prosecutor dropping, or not bringing, a charge or charges relating to other offenses. Third, the defendant can plead guilty or nolo contendere in return for the prosecutor's recommending a sentence. Fourth, the defendant and prosecutor can agree that a particular sentence is the appropriate disposition of the case. [It is apparent, though not explicitly stated, that Rule 11(e) contemplates that the plea agreement may bind the defendant to do more than just plead guilty or nolo contendere. For example, the plea agreement may bind the defendant to cooperate with the prosecution in a different investigation. The Committee intends by its approval of Rule 11(e) to permit the parties to agree on such terms in a plea agreement.]

The Committee added language in subdivisions (e)(2) and (e)(4) to permit a plea agreement to be disclosed to the court, or rejected by it, in camera. There must be a showing of good cause before the court can conduct such proceedings in camera. The language does not address itself to whether the showing of good cause may be made in open court or in camera. That issue is left for the courts to resolve on a case-by-case basis. These changes in subdivisions (e)(2) and (e)(4) will permit a fair trial when there is substantial media interest in a case and the court is rejecting a plea agreement.

The Committee added an exception to subdivision (e)(6). That subdivision provides:

> Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

The Committee's exception permits the use of such evidence in a perjury or false statement prosecution where the plea, offer, or related statement was made by the defendant on the record, under oath and in the presence of counsel. The Committee recognizes that even this limited exception may discourage defendants from being completely candid and open during plea negotiations and may even result in discouraging the reaching of plea agreements. However, the Committee believes hat, on balance, it is more important to protect the integrity of the judicial process from willful deceit and untruthfulness. [The Committee does not intend its language to be construed as mandating or encouraging the swearing-in of the defendant during proceedings in connection with the disclosure and acceptance or rejection of a plea agreement.]

The Committee recast the language of Rule 11(c), which deals with the advice given to a defendant before the court can accept his plea of guilty or nolo contendere. The Committee acted in part because it believed that the warnings given to the defendant ought to include those that *Boykin* v. *Alabama*, 395 U.S. 238 (1969), said were constitutionally required. In addition, and as a result of its change in subdivision (e)(6), the Committee thought if only fair that the defendant be warned that his plea of guilty (later withdrawn) or nolo contendere, or his offer of either plea, or his statements made in connection with such pleas or offers, could later be used against him in a perjury trial if made under oath, on the record, and in the presence of counsel.

CONFERENCE COMMITTEE NOTES, HOUSE REPORT NO. 94-414

Note to subdivision (c). Rule 11(c) enumerates certain things that a judge must tell a defendant before the judge can accept that defendant's plea of guilty or nolo contendere. The House version expands upon the list originally proposed by the Supreme Court. The Senate version adopts the Supreme Court's proposal.

The Conference adopts the House provision.

Note to subdivision (e)(1). Rule 11(e)(1) outlines some general considerations concerning the plea agreement procedure. The Senate version makes nonsubstantive change in the House version.

The Conference adopts the Senate provision.

Note to subdivision (e)(6). Rule 11(e)(6) deals with the use of statements made in connection with plea agreements. The House version permits a limited use of pleas of guilty, later withdrawn, or nolo contendere, offers of such pleas, and statements made in connection with such pleas or offers. Such evidence can be used in a perjury or false statement prosecution if the plea, offer, or related statement was made under oath, on the record, and in the presence of counsel. The Senate version permits evidence of voluntary and reliable statements made in court on the record to be used for the purpose of impeaching the credibility of the declarant or in a perjury or false statement prosecution.

The Conference adopts the House version with changes. The Conference agrees that neither a plea nor the offer of a plea ought to be admissible for any purpose. The Conference-adopted provision, therefore, like the Senate provision, permits only the use of statements made in connection with a plea of guilty, later withdrawn, or a plea of nolo contendere, or in connection with an offer of a guilty or nolo contendere plea.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, except with respect to the amendment adding subd. (e)(6) of this rule, effective Aug. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Assignment of counsel, see rule 44.

Motion before entry of plea or reasonable time thereafter, see rule 12.

Pleadings and motions before trial, see rule 12.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Withdrawal of plea of guilty, see rule 32.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections

(a) Pleadings and Motions

Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions

Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date

Unless otherwise provided by local rule, the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by the Government of the Intention To Use Evidence

(1) *At the Discretion of the Government.* At the arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) *At the Request of the Defendant.* At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on Motion

A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of Failure To Raise Defenses or Objections

Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Records

A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) Effect of Determination

If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any act of Congress relating to periods of limitations.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(11), (12), 89 Stat. 372.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. This rule abolishes pleas to the jurisdiction, pleas in abatement, demurrers, special pleas in bar, and motions to quash. A motion to dismiss or for other appropriate relief is substituted for the purpose of raising all defenses and objections heretofore interposed in any of the foregoing modes. "This should result in a reduction of opportunities for dilatory tactics and, at the same time, relieve the defense of embarrassment. Many competent practitioners have been baffled and mystified by the distinctions between pleas in abatement, pleas in bar, demurrers, and motions to quash, and have, at times, found difficulty in determining which of these should be invoked." Homer Cummings, 29 A.B.A. Jour. 655. See also, Medalie, 4 Lawyers Guild R. (3)1, 4.

2. A similar change was introduced by the Federal Rules of Civil Procedure (Rule 7(a)) which has proven successful. It is also proposed by the A.L.I. Code of Criminal Procedure (Sec. 209).

Note to Subdivision (b)(1) and (2)

These two paragraphs classify into two groups all objections and defenses to be interposed by motion prescribed by Rule 12(a). In one group are defenses and objections which must be raised by motion, failure to do so constituting a waiver. In the other group are defenses and objections which at the defendant's option may be raised by motion, failure to do so, however, not constituting a waiver. (Cf. Rule 12 of Federal Rules of Civil Procedure, 28 U.S.C., Appendix.)

In the first of these groups are included all defenses and objections that are based on defects in the institution of the prosecution or in the indictment and information, other than lack of jurisdiction or failure to charge an offense. All such defenses and objections must be included in a single motion. (Cf. Rule 12(g) of Federal Rules of Civil Procedure, 28 U.S.C., Appendix.) Among the defenses and objections in this group are the following: Illegal selection or organization of the grand jury, disqualification of individual grand jurors, presence of unauthorized persons in the grand jury room, other irregularities in grand jury proceedings, defects in indictment or information other than lack of jurisdiction or failure to state an offense, etc. The provision that these defenses and objections are waived if not raised by motion substantially continues existing law, as they are waived at present unless raised before trial by plea in abatement, demurrer, motion to quash, etc.

In the other group of objections and defenses, which the defendant at his option may raise by motion before trial, are included all defenses and objections which are capable of determination without a trial of the general issue. They include such matters as former jeopardy, former conviction, former acquittal, statute of limitations, immunity, lack of jurisdiction, failure of indictment or information to state an offense, etc. Such matters have been heretofore raised by demurrers, special pleas in bar and motions to quash.

Note to Subdivision (b)(3)

This rule, while requiring the motion to be made before pleading, vests discretionary authority in the court to permit the motion to be made within a reasonable time thereafter. The rule supersedes 18 U.S.C. former § 556a (now §§ 3288, 3289), fixing a definite limitation of time for pleas in abatement and motions to quash. The rule also eliminates the requirement for technical withdrawal of a plea if it is desired to interpose a preliminary objection or defense after the plea

has been entered. Under this rule a plea will be permitted to stand in the meantime.

Note to Subdivision (b)(4)

This rule substantially restates existing law. It leaves with the court discretion to determine in advance of trial defenses and objections raised by motion or to defer them for determination at the trial. It preserves the right to jury trial in those cases in which the right is given under the Constitution or by statute. In all other cases it vests in the court authority to determine issues of fact in such manner as the court deems appropriate.

Note to Subdivision (b)(5)

1. The first sentence substantially restates existing law, 18 U.S.C. former § 561 (Indictments and presentments; judgment on demurrer), which provides that in case a demurrer to an indictment or information is overruled, the judgment shall be respondeat ouster.

2. The last sentence of the rule that "Nothing in this rule shall be deemed to affect the provisions of any act of Congress relating to periods of limitations" is intended to preserve the provisions of statutes which permit a reindictment if the original indictment is found defective or is dismissed for other irregularities and the statute of limitations has run in the meantime, 18 U.S.C. former § 587 (now § 3288) (Defective indictment; defect found after period of limitations; reindictment); Id. former sec. 588 (now § 3289) (Defective indictment; defect found before period of limitations; reindictment); Id. 18 U.S.C. former § 589 (now §§ 3288, 3289) (Defective indictment; defense of limitations to new indictment); Id. 18 U.S.C. former § 556a (now §§ 3288, 3289) (Indictments and presentments; objections to drawing or qualification of grand jury; time for filing; suspension of statute of limitations).

1974 AMENDMENT

Subdivision (a) remains as it was in the old rule. It "speaks only of defenses and objections that prior to the rules could have been raised by a plea, demurrer, or motion to quash" (C. Wright, Federal Practice and Procedure: Criminal § 191 at p. 397 (1969)), and this might be interpreted as limiting the scope of the rule. However, some courts have assumed that old rule 12 does apply to pretrial motions generally, and the amendments to subsequent subdivisions of the rule should make clear that the rule is applicable to pretrial motion practice generally. (See e.g., rule 12(b)(3), (4), (5) and rule 41(e).)

Subdivision (b) is changed to provide for some additional motions and requests which must be made prior to trial. Subdivisions (b)(1) and (2) are restatements of the old rule.

Subdivision (b)(3) makes clear that objections to evidence on the ground that it was illegally obtained must be raised prior to trial. This is the current rule with regard to evidence obtained as a result of an illegal search. See rule 41(e); C. Wright, Federal Practice and Procedure: Criminal § 673 (1969, Supp. 1971). It is also the practice with regard to other forms of illegality such as the use of unconstitutional means to obtain a confession. See C. Wright, Federal Practice and Procedure: Criminal § 673 at p. 108 (1969). It seems apparent that the same principle should apply whatever the claimed basis for the application of the exclusionary rule of evidence may be. This is consistent with the court's statement in *Jones* v. *United States*, 362 U.S. 257, 264, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960):

> This provision of Rule 41(e), requiring the motion to suppress to be made before trial, is a crystallization of decisions of this Court requiring that procedure, and is designed to eliminate from the trial disputes over police conduct not immediately relevant to the question of guilt. (Emphasis added.)

Subdivision (b)(4) provides for a pretrial request for discovery by either the defendant or the government to the extent to which such discovery is authorized by rule 16.

Subdivision (b)(5) provides for a pretrial request for a severance as authorized in rule 14.

Subdivision (c) provides that a time for the making of motions shall be fixed at the time of the arraignment or as soon thereafter as practicable by court rule or direction of a judge. The rule leaves to the individual judge whether the motions may be oral or written. This and other amendments to rule 12 are designed to make possible and to encourage the making of motions prior to trial, whenever possible, and in a single hearing rather than in a series of hearings. This is the recommendation of the American Bar Association's Committee on Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970); see especially §§ 5.2 and 5.3. It also is the procedure followed in those jurisdictions which have used the so-called "omnibus hearing" originated by Judge James Carter in the Southern District of California. See 4 Defender Newsletter 44 (1967); Miller, The Omnibus Hearing—An Experiment in Federal Criminal Discovery, 5 San Diego L.Rev. 293 (1968); American Bar Association, Standards Relating to Discovery and Procedure Before Trial, Appendices B, C, and D (Approved Draft, 1970). The omnibus hearing is also being used, on an experimental basis, in several other district courts. Although the Advisory Committee is of the view that it would be premature to write the omnibus hearing procedure into the rules, it is of the view that the single pretrial hearing should be made possible and its use encouraged by the rules.

There is a similar trend in state practice. See, e.g., *State ex rel. Goodchild* v. *Burke*, 27 Wis.2d 244, 133 N.W.2d 753 (1965); *State ex rel. Rasmussen* v. *Tahash*, 272 Minn. 539, 141 N.W.2d 3 (1965).

The rule provides that the motion date be set at "the arraignment or as soon thereafter as practicable." This is the practice in some federal courts including those using the omnibus hearing. (In order to obtain the advantage of the omnibus hearing, counsel routinely plead not guilty at the initial arraignment on the information or indictment and then may indicate a desire to change the plea to guilty following the omnibus hearing. This practice builds a more adequate record in guilty plea cases.) The rule further provides that the date may be set before the arraignment if local rules of court so provide.

Subdivision (d) provides a mechanism for insuring that a defendant knows of the government's intention to use evidence to which the defendant may want to object. On some occasions the resolution of the admissibility issue prior to trial may be advantageous to the government. In these situations the attorney for the government can make effective defendant's obligation to make his motion to suppress prior to trial by giving defendant notice of the government's intention to use certain evidence. For example, in United States v. Desist, 384 F.2d 889, 897 (2d Cir. 1967), the court said:

> Early in the pre-trial proceedings, the Government commendably informed both the court and defense counsel that an electronic listening device had been used in investigating the case, and suggested a hearing be held as to its legality.

See also the "Omnibus Crime Control and Safe Streets Act of 1968," 18 U.S.C. § 2518(9):

> The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved.

In cases in which defendant wishes to know what types of evidence the government intends to use so that he can make his motion to suppress prior to trial, he can request the government to give notice of its intention to use specified evidence which the defendant is entitled to discover under rule 16. Although the defendant is already entitled to discovery of such evidence prior to trial under rule 16, rule 12 makes it pos-

sible for him to avoid the necessity of moving to suppress evidence which the government does not intend to use. No sanction is provided for the government's failure to comply with the court's order because the committee believes that attorneys for the government will in fact comply and that judges have ways of insuring compliance. An automatic exclusion of such evidence, particularly where the failure to give notice was not deliberate, seems to create too heavy a burden upon the exclusionary rule of evidence, especially when defendant has opportunity for broad discovery under rule 16. Compare ABA Project on Standards for Criminal Justice, Standards Relating to Electronic Surveillance (Approved Draft, 1971) at p. 116:

A failure to comply with the duty of giving notice could lead to the suppression of evidence. Nevertheless, the standards make it explicit that the rule is intended to be a matter of procedure which need not under appropriate circumstances automatically dictate that evidence otherwise admissible be suppressed.

Pretrial notice by the prosecution of its intention to use evidence which may be subject to a motion to suppress is increasingly being encouraged in state practice. See, e.g., *State ex rel. Goodchild* v. *Burke*, 27 Wis.2d 244, 264, 133 N.W.2d 753, 763 (1965):

In the interest of better administration of criminal justice we suggest that wherever practicable the prosecutor should within a reasonable time before trial notify the defense as to whether any alleged confession or admission will be offered in evidence at the trial. We also suggest, in cases where such notice is given by the prosecution, that the defense, if it intends to attack the confession or admission as involuntary, notify the prosecutor of a desire by the defense for a special determination on such issue.

See also *State ex rel. Rasmussen* v. *Tahash*, 272 Minn. 539, 553–556, 141 N.W.2d 3, 13–15 (1965):

At the time of arraignment when a defendant pleads not guilty, or as soon as possible thereafter, the state will advise the court as to whether its case against the defendant will include evidence obtained as the result of a search and seizure; evidence discovered because of a confession or statements in the nature of a confession obtained from the defendant; or confessions or statements in the nature of confessions.

Upon being so informed, the court will formally advise the attorney for the defendant (or the defendant himself if he refuses legal counsel) that he may, if he chooses, move the court to suppress the evidence so secured or the confession so obtained if his contention is that such evidence was secured or confession obtained in violation of defendant's constitutional rights. * * *

The procedure which we have outlined deals only with evidence obtained as the result of a search and seizure and evidence consisting of or produced by confession on the part of the defendant. However, the steps which have been suggested as a method of dealing with evidence of this type will indicate to counsel and to the trial courts that the pretrial consideration of other evidentiary problems, the resolution of which is needed to assure the integrity of the trial when conducted, will be most useful and that this court encourages the use of such procedures whenever practical.

Subdivision (e) provides that the court shall rule on a pretrial motion before trial unless the court orders that it be decided upon at the trial of the general issue or after verdict. This is the old rule. The reference to issues which must be tried by the jury is dropped as unnecessary, without any intention of changing current law or practice. The old rule begs the question of when a jury decision is required at the trial, providing only that a jury is necessary if "required by the Constitution or an act of Congress." It will be observed that subdivision (e) confers general authority to defer the determination of any pretrial motion until after verdict. However, in the case of a motion to suppress evidence the power should be exercised in the light of the possibility that if the motion is ultimately granted a retrial of the defendant may not be permissible.

Subdivision (f) provides that a failure to raise the objections or make the requests specified in subdivision (b) constitutes a waiver thereof, but the court is allowed to grant relief from the waiver if adequate cause is shown. See C. Wright, Federal Practice and Procedure: Criminal § 192 (1969), where it is pointed out that the old rule is unclear as to whether the waiver results only from a failure to raise the issue prior to trial or from the failure to do so at the time fixed by the judge for a hearing. The amendment makes clear that the defendant and, where appropriate, the government have an obligation to raise the issue at the motion date set by the judge pursuant to subdivision (c).

Subdivision (g) requires that a verbatim record be made of pretrial motion proceedings and requires the judge to make a record of his findings of fact and conclusions of law. This is desirable if pretrial rulings are to be subject to post-conviction review on the record. The judge may find and rule orally from the bench, so long as a verbatim record is taken. There is no necessity of a separate written memorandum containing the judge's findings and conclusions.

Subdivision (h) is essentially old rule 12(b)(5) except for the deletion of the provision that defendant may plead if the motion is determined adversely to him or, if he has already entered a plea, that that plea stands. This language seems unnecessary particularly in light of the experience in some district courts where a pro forma plea of not guilty is entered at the arraignment, pretrial motions are later made, and depending upon the outcome the defendant may then change his plea to guilty or persist in his plea of not guilty.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 12 of the Federal Rules of Criminal Procedure deals with pretrial motions and pleadings. The Supreme Court proposed several amendments to it. The more significant of these are set out below.

Subdivision (b) as proposed to be amended provides that the pretrial motions may be oral or written, at the court's discretion. It also provides that certain types of motions must be made before trial.

Subdivision (d) as proposed to be amended provides that the government, either on its own or in response to a request by the defendant, must notify the defendant of its intention to use certain evidence in order to give the defendant an opportunity before trial to move to suppress that evidence.

Subdivision (e) as proposed to be amended permits the court to defer ruling on a pretrial motion until the trial of the general issue or until after verdict.

Subdivision (f) as proposed to be amended provides that the failure before trial to file motions or requests or to raise defenses which must be filed or raised prior to trial, results in a waiver. However, it also provides that the court, for cause shown, may grant relief from the waiver.

Subdivision (g) as proposed to be amended requires that a verbatim record be made of the pretrial motion proceedings and that the judge make a record of his findings of fact and conclusions of law.

B. Committee Action. The Committee modified subdivision (e) to permit the court to defer its ruling on a pretrial motion until after the trial only for good cause. Moreover, the court cannot defer its ruling if to do so will adversely affect a party's right to appeal. The Committee believes that the rule proposed by the Supreme Court could deprive the government of its appeal rights under statutes like section 3731 of title 18 of the United States Code. Further, the Committee hopes to discourage the tendency to reserve rulings on pretrial motions until after verdict in the hope that the jury's verdict will make a ruling unnecessary.

The Committee also modified subdivision (h), which deals with what happens when the court grants a pretrial motion based upon a defect in the institution of the prosecution or in the indictment or information. The Committee's change provides that when such a motion is granted, the court may order that the defendant be continued in custody or that his bail be con-

tinued for a specified time. A defendant should not automatically be continued in custody when such a motion is granted. In order to continue the defendant in custody, the court must not only determine that there is probable cause, but it must also determine, in effect, that there is good cause to have the defendant arrested.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Affidavit to support motion, see rule 47.
Application for order by motion, see rule 47.
Form of motion to dismiss, see form 19.
Former pleas, demurrers, and motions to quash used in acts of Congress, see rule 54.
Motion for order—
Bill of particulars, see rule 7.
Dismissal of indictment on objections to array of grand jury, see rule 6.
Striking surplusage from indictment or information, see rule 7.
Pleas, see rule 11.
Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.
Reindictment before and after periods of limitations, see sections 3288 and 3289 of this title.
Service and filing of motion papers, see rule 49.
Time for service of motions and affidavits generally, see rule 45.
Withdrawal of plea of guilty, see rule 32.

Rule 12.1. Notice of Alibi

(a) Notice by Defendant

Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) Disclosure of Information and Witness

Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing Duty To Disclose

If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) Failure To Comply

Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) Exceptions

For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) Inadmissibility of Withdrawn Alibi

Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

(Added Apr. 22, 1974, eff. Dec. 1, 1975, and amended July 31, 1975, Pub. L. 94-64, § 3(13), 89 Stat. 372.)

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 12.1 is new. See rule 87 of the United States District Court Rules for the District of Columbia for a somewhat comparable provision.

The Advisory Committee has dealt with the issue of notice of alibi on several occasions over the course of the past three decades. In the Preliminary Draft of the Federal Rules of Criminal Procedure, 1943, and the Second Preliminary Draft, 1944, an alibi-notice rule was proposed. But the Advisory Committee was closely divided upon whether there should be a rule at all and, if there were to be a rule, what the form of the rule should be. Orfield, The Preliminary Draft of the Federal Rules of Criminal Procedure, 22 Texas L.Rev. 37, 57-58 (1943). The principal disagreement was whether the prosecutor or the defendant should initiate the process. The Second Preliminary Draft published in 1944 required the defendant to initiate the process by a motion to require the government to state with greater particularity the time and place it would rely on. Upon receipt of this information, defendant was required to give his notice of alibi. This formulation was "vehemently objected" to by five members of the committee (out of a total of eighteen) and two alternative rule proposals were submitted to the Supreme Court. Both formulations—one requiring the prosecutor to initiate the process, the other requiring the defendant to initiate the process—were rejected by the Court. See Epstein, Advance Notice of Alibi, 55 J.Crim.L., C. & P.S. 29, 30 (1964), in which the view is expressed that the unresolved split over the rule "probably caused" the court to reject an alibi-notice rule.

Rule 12.1 embodies an intermediate position. The initial burden is upon the defendant to raise the defense of alibi, but he need not specify the details of his alibi defense until the government specifies the time, place, and date of alleged offense. Each party must, at the appropriate time, disclose the names and addresses of witnesses.

In 1962 the Advisory Committee drafted an alibi-notice rule and included it in the Preliminary Draft of December 1962, rule 12A at pp. 5-6. This time the Advisory Committee withdrew the rule without submitting it to the Standing Committee on Rules of Practice and Procedure. Wright, Proposed Changes in Federal Civil, Criminal, and Appellate Procedure, 35 F.R.D. 317, 326 (1964). Criticism of the December 1962 alibi-notice rule centered on constitutional questions and questions of general fairness to the defendant. See Everett, Discovery in Criminal Cases—In Search of a Standard, 1964 Duke L.J. 477, 497-499.

Doubts about the constitutionality of a notice-of-alibi rule were to some extent resolved by *Williams* v. *Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970). In that case the court sustained the constitutionality of the Florida notice-of-alibi statute, but left unresolved two important questions.

(1) The court said that it was not holding that a notice-of-alibi requirement was valid under conditions where a defendant does not enjoy "reciprocal discovery against the State." 399 U.S. at 82 n. 11, 90 S.Ct. 1893. Under the revision of rule 16, the defendant is entitled to substantially enlarged discovery in federal cases, and it would seem appropriate to conclude that the rules will comply with the "reciprocal discovery" qualification of the *Williams* decision. [See, *Wardius* v. *Oregon*, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973) was decided after the approval of proposed Rule 12.1 by the Judicial Conference of the United States. In that case the Court held the Oregon Notice-of-Alibi statute unconstitutional because of the failure to give the defendant adequate reciprocal discovery rights.]

(2) The court said that it did not consider the question of the "validity of the threatened sanction, had petitioner chosen not to comply with the notice-of-alibi rule." 399 U.S. at 83 n. 14, 90 S.Ct. 1893. This issue remains unresolved. [See *Wardius* v. *Oregon*, 412 U.S. at 472, Note 4, 93 S.Ct. 2208.] Rule 12.1(e) provides that the court may exclude the testimony of any witness whose name has not been disclosed pursuant to the requirements of the rule. The defendant may, however, testify himself. Prohibiting from testifying a witness whose name was not disclosed is a common provision in state statutes. See Epstein, *supra*, at 35. It is generally assumed that the sanction is essential if the notice-of-alibi rule is to have practical significance. See Epstein, *supra*, at 36. The use of the term "may" is intended to make clear that the judge may allow the alibi witness to testify if, under the particular circumstances, there is cause shown for the failure to conform to the requirements of the rules. This is further emphasized by subdivision (f) which provides for exceptions whenever "good cause" is shown for the exception.

The Supreme Court of Illinois recently upheld an Illinois statute which requires a defendant to give notice of his alibi witnesses although the prosecution is not required to disclose its alibi rebuttal witnesses. *People* v. *Holiday*, 47 Ill.2d 300, 265 N.E.2d 634 (1970). Because the defense complied with the requirement, the court did not have to consider the propriety of penalizing noncompliance.

The requirement of notice of alibi seems to be an increasingly common requirement of state criminal procedure. State statutes and court rules are cited in 399 U.S. at 82 n. 11, 90 S.Ct. 1893. See also Epstein, *supra*.

Rule 12.1 will serve a useful purpose even though rule 16 now requires disclosure of the names and addresses of government and defense witnesses. There are cases in which the identity of defense witnesses may be known, but it may come as a surprise to the government that they intend to testify as to an alibi and there may be no advance notice of the details of the claimed alibi. The result often is an unnecessary interruption and delay in the trial to enable the government to conduct an appropriate investigation. The objective of rule 12.1 is to prevent this by providing a mechanism which will enable the parties to have specific information in advance of trial to prepare to meet the issue of alibi during the trial.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 12.1 is a new rule that deals with the defense of alibi. It provides that a defendant must notify the government of his intention to rely upon the defense of alibi. Upon receipt of such notice, the government must advise the defendant of the specific time, date, and place at which the offense is alleged to have been committed. The defendant must then inform the government of the specific place at which he claims to have been when the offense is alleged to have been committed, and of the names and addresses of the witnesses on whom he intends to rely to establish his alibi. The government must then inform the defendant of the names and addresses of the witnesses on whom it will rely to establish the defendant's presence at the scene of the crime. If either party fails to comply with the provisions of the rule, the court may exclude the testimony of any witness whose identity is not disclosed. The rule does not attempt to limit the right of the defendant to testify in his own behalf.

B. Committee Action. The Committee disagrees with the defendant-triggered procedures of the rule proposed by the Supreme Court. The major purpose of a notice-of-alibi rule is to prevent unfair surprise to the prosecution. The Committee, therefore, believes that it should be up to the prosecution to trigger the alibi defense discovery procedures. If the prosecution is worried about being surprised by an alibi defense, it can trigger the alibi defense discovery procedures. If the government fails to trigger the procedures and if the defendant raises an alibi defense at trial, then the government cannot claim surprise and get a continuance of the trial.

The Committee has adopted a notice-of-alibi rule similar to the one now used in the District of Columbia. [See Rule 2-5(b) of the Rules of the United States District Court for the District of Columbia. See also Rule 16-1 of the Rules of Criminal Procedure for the Superior Court of the District of Columbia.] The rule is prosecution-triggered. If the prosecutor notifies the defendant of the time, place, and date of the alleged offense, then the defendant has 10 days in which to notify the prosecutor of his intention to rely upon an alibi defense, specify where he claims to have been at the time of the alleged offense, and provide a list of his alibi witnesses. The prosecutor, within 10 days but no later than 10 days before trial, must then provide the defendant with a list of witnesses who will place the defendant at the scene of the alleged crime and those witnesses who will be used to rebut the defendant's alibi witnesses.

The Committee's rule does not operate only to the benefit of the prosecution. In fact, its rule will provide the defendant with more information than the rule proposed by the Supreme Court. The rule proposed by the Supreme Court permits the defendant to obtain a list of only those witnesses who will place him at the scene of the crime. The defendant, however, would get the names of these witnesses anyway as part of his discovery under Rule 16(a)(1)(E). The Committee rule not only requires the prosecution to provide the names of witnesses who place the defendant at the scene of the crime, but it also requires the prosecution to turn over the names of those witnesses who will be called in rebuttal to the defendant's alibi witnesses. This is information that the defendant is not otherwise entitled to discover.

EFFECTIVE DATE OF RULE; EFFECTIVE DATE OF 1975 AMENDMENTS

This rule, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

Rule 12.2. Notice of Defense Based Upon Mental Condition

(a) Defense of Insanity

If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, insanity may

not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Mental Disease or Defect Inconsistent With the Mental Element Required for the Offense Charged

If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Psychiatric Examination

In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.

(d) Failure To Comply

If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state.

(Added Apr. 22, 1974, eff. Dec. 1, 1975, and amended July 31, 1975, Pub. L. 94-64, § 3(14), 89 Stat. 373.)

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 12.2 is designed to require a defendant to give notice prior to trial of his intention (1) to rely upon the defense of insanity or (2) to introduce expert testimony of mental disease or defect on the theory that such mental condition is inconsistent with the mental state required for the offense charged. This rule does not deal with the issue of mental competency to stand trial.

The objective is to give the government time to prepare to meet the issue, which will usually require reliance upon expert testimony. Failure to give advance notice commonly results in the necessity for a continuance in the middle of a trial, thus unnecessarily delaying the administration of justice.

A requirement that the defendant give notice of his intention to rely upon the defense of insanity was proposed by the Advisory Committee in the Second Preliminary Draft of Proposed Amendments (March 1964), rule 12.1, p. 7. The objective of the 1964 proposal was explained in a brief Advisory Committee Note:

> Under existing procedure although insanity is a defense, once it is raised the burden to prove sanity beyond a reasonable doubt rests with the government. *Davis* v. *United States*, 160 U.S. 469, 16 S.Ct. 353, 40 L.Ed. 499 (1895). This rule requires pretrial notice to the government of an insanity defense, thus permitting it to prepare to meet the issue. Furthermore, in *Lynch* v. *Overholser*, 369 U.S. 705, 82 S.Ct. 1063, 8 L.Ed.2d 211 (1962), the Supreme Court held that, at least in the face of a mandatory commitment statute, the defendant had a right to determine whether or not to raise the issue of insanity. The rule gives the defendant a method of raising the issue and precludes any problem of deciding whether or not the defendant relied on insanity.

The Standing Committee on Rules of Practice and Procedure decided not to recommend the proposed Notice of Insanity rule to the Supreme Court. Reasons were not given.

Requiring advance notice of the defense of insanity is commonly recommended as a desirable procedure. The Working Papers of the National Commission on Reform of Federal Criminal Laws, Vol. 1, p. 254 (1970), state in part:

> It is recommended that procedural reform provide for advance notice that evidence of mental disease or defect will be relied upon in defense. . . .

Requiring advance notice is proposed also by the American Law Institute's Model Penal Code, § 4.03 (P.O.D. 1962). The commentary in Tentative Draft No. 4 at 193-194 (1955) indicates that, as of that time, six states required pretrial notice and an additional eight states required that the defense of insanity be specially pleaded.

For recent state statutes see N.Y. CPL § 250.10 (McKinney's Consol. Laws, c. 11-A, 1971) enacted in 1970 which provides that no evidence by a defendant of a mental disease negativing criminal responsibility shall be allowed unless defendant has served notice on the prosecutor of his intention to rely upon such defense. See also New Jersey Penal Code (Final Report of the New Jersey Criminal Law Revision Commission, Oct. 1971) § 2c: 4-3; New Jersey Court Rule 3:12; State v. Whitlow, 45 N.J. 3, 22 n. 3, 210 T.2d 763 (1965), holding the requirement of notice to be both appropriate and not in violation of the privilege against self-incrimination.

Subdivision (a) deals with notice of the "defense of insanity." In this context the term insanity has a well-understood meaning. See, e.g., Tydings, A Federal Verdict of Not Guilty by Reason of Insanity and a Subsequent Commitment Procedure, 27 Md.L.Rev. 131 (1967). Precisely how the defense of insanity is phrased does, however, differ somewhat from circuit to circuit. See Study Draft of a New Federal Criminal Code, § 503 Comment at 37 (USGPO 1970). For a more extensive discussion of present law, see Working Papers of the National Commission on Reform of Federal Criminal Laws, Vol. 1, pp. 229-247 (USGPO 1970). The National Commission recommends the adoption of a single test patterned after the proposal of the American Law Institute's Model Penal Code. The proposed definition provides in part:

> In any prosecution for an offense lack of criminal responsibility by reason of mental disease or defect is a defense. [Study Draft of a New Federal Criminal Code § 503 at 36-37.]

Should the proposal of the National Commission be adopted by the Congress, the language of subdivision (a) probably ought to be changed to read "defense of lack of criminal responsibility by reason of mental disease or defect" rather than "defense of insanity."

Subdivision (b) is intended to deal with the issue of expert testimony bearing upon the issue of whether the defendant had the "mental state required for the offense charged."

There is some disagreement as to whether it is proper to introduce evidence of mental disease or defect bearing not upon the defense of insanity, but rather upon the existence of the mental state required by the offense charged. The American Law Institute's Model Penal Code takes the position that such evidence is admissible [§ 4.02(1) (P.O.D. 1962)]. See also *People* v. *Gorshen*, 51 Cal.2d 716, 336 P.2d 492 (1959).

The federal cases reach conflicting conclusions. See *Rhodes* v. *United States*, 282 F.2d 59, 62 (4th Cir. 1960):

> The proper way would have been to ask the witness to describe the defendant's mental condition

and symptoms, his pathological beliefs and motivations, if he was thus afflicted, and to explain how these influenced or could have influenced his behavior, particularly his mental capacity knowingly to make the false statement charged, or knowingly to forge the signatures * * *.

Compare *Fisher* v. *United States*, 328 U.S. 463, 66 S.Ct. 1318, 90 L.Ed. 1382 (1946).

Subdivision (b) does not attempt to decide when expert testimony is admissible on the issue of the requisite mental state. It provides only that the defendant must give pretrial notice when he intends to introduce such evidence. The purpose is to prevent the need for a continuance when such evidence is offered without prior notice. The problem of unnecessary delay has arisen in jurisdictions which do not require prior notice of an intention to use expert testimony on the issue of mental state. Referring to this, the California Special Commission on Insanity and Criminal Offenders, First Report 30 (1962) said:

> The abuses of the present system are great. Under a plea of "not guilty" without any notice to the people that the defense of insanity will be relied upon, defendant has been able to raise the defense upon the trial of the issue as to whether he committed the offense charged.

As an example of the delay occassioned by the failure to heretofore require a pretrial notice by the defendant, see *United States* v. *Albright*, 388 F.2d 719 (4th Cir. 1968), where a jury trial was recessed for 23 days to permit a psychiatric examination by the prosecution when the defendant injected a surprise defense of lack of mental competency.

Subdivision (c) gives the court the authority to order the defendant to submit to a psychiatric examination by a psychiatrist designated by the court. A similar provision is found in ALI, Model Penal Code § 4.05(1) (P.O.D. 1962). This is a common provision of state law, the constitutionality of which has been sustained. Authorities are collected in ALI, Model Penal Code, pp. 195–196 Tent. Draft No. 4, (1955). For a recent proposal, see the New Jersey Penal Code § 2c: 4–5 (Final Report of the New Jersey Criminal Law Revision Commission, Oct. 1971) authorizing appointment of "at least one qualified psychiatrist to examine and report upon the mental condition of the defendant." Any issue of self-incrimination which might arise can be dealt with by the court as, for example, by a bifurcated trial which deals separately with the issues of guilt and of mental responsibility. For statutory authority to appoint a psychiatrist with respect to competency to stand trial, see 18 U.S.C. § 4244.

Subdivision (d) confers authority on the court to exclude expert testimony in behalf of a defendant who has failed to give notice under subdivision (b) or who refuses to be examined by a court-appointed psychiatrist under subdivision (c). See *State* v. *Whitlow*, 45 N.J. 3, 23, 210 A.2d 763 (1965), which indicates that it is proper to limit or exclude testimony by a defense psychiatrist whenever defendant refuses to be examined.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 12.2 is a new rule that deals with defense based upon mental condition. It provides that: (1) The defendant must notify the prosecution in writing of his intention to rely upon the defense of insanity. If the defendant fails to comply, "insanity may not be raised as a defense." (2) If the defendant intends to introduce expert testimony relating to mental disease or defect on the issue whether he had the requisite mental state, he must notify the prosecution in writing. (3) The court, on motion of the prosecution, may order the defendant to submit to a psychiatric examination by a court-appointed psychiatrist. (4) If the defendant fails to undergo the court-ordered psychiatric examination, the court may exclude any expert witness the defendant offers on the issue of his mental state.

B. Committee Action. The Committee agrees with the proposed rule but has added language concerning the use of statements made to a psychiatrist during the course of a psychiatric examination provided for by Rule 12.2. The language provides:

> No statement made by the accused in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused before the judge who or jury which determines the guilt of the accused, prior to the determination of guilt.

The purpose of this rule is to secure the defendant's fifth amendment right against self-incrimination. See *State* v. *Raskin*, 34 Wis.2d 607, 150 N.W.2d 318 (1967). The provision is flexible and does not totally preclude the use of such statements. For example, the defendant's statement can be used at a separate determination of the issue of sanity or for sentencing purposes once guilt has been determined. A limiting instruction to the jury in a single trial to consider statements made to the psychiatrist only on the issue of sanity would not satisfy the requirements of the rule as amended. The prejudicial effect on the determination of guilt would be inescapable.

The Committee notes that the rule does not attempt to resolve the issue whether the court can constitutionally compel a defendant to undergo a psychiatric examination when the defendant is unwilling to undergo one. The provisions of subdivision (c) are qualified by the phrase, "In an appropriate case." If the court cannot constitutionally compel an unwilling defendant to undergo a psychiatric examination, then the provisions of subdivision (c) are inapplicable in every instance where the defendant is unwilling to undergo a court-ordered psychiatric examination. The Committee, by its approval of subdivision (c), intends to take no stand whatever on the constitutional question.

CONFERENCE COMMITTEE NOTES, HOUSE REPORT NO. 94-414

Rule 12.2(c) deals with court-ordered psychiatric examinations. The House version provides that no statement made by a defendant during a court-ordered psychiatric examination could be admitted in evidence against the defendant before the trier of fact that determines the issue of guilt prior to the determination of guilt. The Senate version deletes this provision.

The Conference adopts a modified House provision and restores to the bill the language of H.R. 6799 as it was originally introduced. The Conference adopted language provides that no statement made by the defendant during a psychiatric examination provided for by the rule shall be admitted against him on the issue of guilt in any criminal proceeding.

The Conference believes that the provision in H.R. 6799 as originally introduced in the House adequately protects the defendant's fifth amendment right against self-incrimination. The rule does not preclude use of statements made by a defendant during a court-ordered psychiatric examination. The statements may be relevant to the issue of defendant's sanity and admissable on that issue. However, a limiting instruction would not satisfy the rule if a statement is so prejudicial that a limiting instruction would be ineffective. Cf. practice under 18 U.S.C. 4244.

EFFECTIVE DATE OF RULE; EFFECTIVE DATE OF 1975 AMENDMENTS

This rule, and the amendments of this rule made by section 3 of Pub. L. 94–64, effective Dec. 1, 1975, see section 2 of Pub. L. 94–64, set out as a note under rule 4 of these rules.

Rule 13. Trial Together of Indictments or Informations

The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is

more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is substantially a restatement of existing law, 18 U.S.C. former § 557 (Indictments and presentments; joinder of charges); *Logan* v. *United States*, 144 U.S. 263, 296, 12 S.Ct. 617, 36 L.Ed. 429; *Showalter* v. *United States*, 260 Fed. 719, C.C.A. 4th, certiorari denied 250 U.S. 672, 40 S.Ct. 14, 63 L.Ed. 1200; *Hostetter* v. *United States*, 16 F.2d 921, C.C.A. 8th; *Capone* v. *United States*, 51 F.2d 609, 619–620, C.C.A. 7th.

Rule 14. Relief from Prejudicial Joinder

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a restatement of existing law under which severance and other similar relief is entirely in the discretion of the court, 18 U.S.C. former § 557 (Indictments and presentments; joinder of charges); *Pointer* v. *United States*, 151 U.S. 396, 14 S. Ct. 410, 38 L. Ed. 208; *Pierce* v. *United States*, 160 U.S. 355, 16 S. Ct. 321, 40 L. Ed. 454; *United States* v. *Ball*, 163 U.S. 662, 673, 16 S. Ct. 1192, 41 L. Ed. 300; *Stilson* v. *United States*, 250 U.S. 583, 40 S. Ct. 28, 63 L. Ed. 1154.

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A defendant may be prejudiced by the admission in evidence against a co-defendant of a statement or confession made by that co-defendant. This prejudice cannot be dispelled by cross-examination if the co-defendant does not take the stand. Limiting instructions to the jury may not in fact erase the prejudice. While the question whether to grant a severance is generally left within the discretion of the trial court, recent Fifth Circuit cases have found sufficient prejudice involved to make denial of a motion for severance reversible error. See *Schaffer* v. *United States*, 221 F. 2d 17 (5th Cir. 1955); *Barton* v. *United States*, 263 F. 2d 894 (5th Cir. 1959). It has even been suggested that when the confession of the co-defendant comes as a surprise at the trial, it may be error to deny a motion or a mistrial. See *Belvin* v. *United States*, 273 F. 2d 583 (5th Cir. 1960).

The purpose of the amendment is to provide a procedure whereby the issue of possible prejudice can be resolved on the motion for severance. The judge may direct the disclosure of the confessions or statements of the defendants to him for in camera inspection as an aid to determining whether the possible prejudice justifies ordering separate trials. Cf. note, Joint and Single Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure, 74 Yale L.J. 551, 565 (1965).

Rule 15. Depositions

(a) When Taken

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking

The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of Expenses

Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How Taken

Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The government shall make available to the defendant or his counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the defendant would be entitled at the trial.

(e) Use

At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Federal Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Deposition Testimony

Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by Agreement Not Precluded

Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(15)-(19), 89 Stat. 373, 374.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. This rule continues the existing law permitting defendants to take depositions in certain limited classes of cases under dedimus potestatem and in perpetuam rei memoriam, 28 U.S.C. former § 644. This statute has been generally held applicable to criminal cases, *Clymer* v. *United States*, 38 F.2d 581, C.C.A. 10th; *Wong Yim* v. *United States*, 118 F.2d 667, C.C.A. 9th, certiorari denied 313 U.S. 589, 61 S.Ct. 1112, 85 L.Ed. 1544; *United States* v. *Cameron*, 15 Fed. 794, C.C.E.D. Mo.; *United States* v. *Hofmann*, 24 F.Supp. 847, S.D.N.Y. Contra, *Luxemberg* v. *United States*, 45 F.2d 497, C.C.A. 4th, certiorari denied 283 U.S. 820, 51 S.Ct. 345, 75 L.Ed. 1436. The rule continues the limitation of the statute that the taking of depositions is to be restricted to cases in which they are necessary "in order to prevent a failure of justice."

2. Unlike the practice in civil cases in which depositions may be taken as a matter of right by notice without permission of the court (Rules 26(a) and 30, Federal Rules of Civil Procedure, 28 U.S.C., Appendix), this rule permits depositions to be taken only by order of the court, made in the exercise of discretion and on notice to all parties. It was contemplated that in criminal cases depositions would be used only in exceptional situations, as has been the practice heretofore.

3. This rule introduces a new feature in authorizing the taking of the deposition of a witness committed for failure to give bail (see Rule 46(b)). This matter is, however, left to the discretion of the court. The purpose of the rule is to afford a method of relief for such a witness, if the court finds it proper to extend it.

Note to Subdivision (b)

This subdivision, as well as subdivisions (d) and (f), sets forth the procedure to be followed in the event that the court grants an order for the taking of a deposition. The procedure prescribed is similar to that in civil cases, Rules 28-31, Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (c)

This rule introduces a new feature for the purpose of protecting the rights of an indigent defendant.

Note to Subdivision (d)

See Note to Subdivision (b), supra.

Note to Subdivision (e)

In providing when and for what purpose a deposition may be used at the trial, this rule generally follows the corresponding provisions of the Federal Rules of Civil Procedure, Rule 26(d)(3), 28 U.S.C., Appendix. The only difference is that in civil cases a deposition may be introduced at the trial if the witness is at a greater distance than 100 miles from the place of trial, while this rule requires that the witness be out of the United States. The distinction results from the fact that a subpoena in a civil case runs only within the district where issued or 100 miles from the place of trial (Rule 45(e)(1), Federal Rules of Civil Procedure, 28 U.S.C., Appendix), while a subpoena in a criminal case runs throughout the United States (see Rule 17(e)(1), infra).

Note to Subdivision (f)

See Note to Subdivision (b), supra.

1974 AMENDMENT

Rule 15 authorizes the taking of depositions by the government. Under former rule 15 only a defendant was authorized to take a deposition.

The revision is similar to Title VI of the Organized Crime Control Act of 1970. The principal difference is that Title VI (18 U.S.C. § 3503) limits the authority of the government to take depositions to cases in which the Attorney General certifies that the "proceeding is against a person who is believed to have participated in an organized criminal activity." This limitation is not contained in rule 15.

Dealing with the issue of government depositions so soon after the enactment of 18 U.S.C. § 3503 is not inconsistent with the congressional purpose. On the floor of the House, Congressman Poff, a principal spokesman for the proposal, said that the House version was not designed to "limit the Judicial Conference of the United States in the exercise of its rulemaking authority . . . from addressing itself to other problems in this area or from adopting a broader approach." 116 Cong.Rec. 35293 (1970).

The recently enacted Title VI of the Organized Crime Control Act of 1970 (18 U.S.C. § 3503) is based upon earlier efforts of the Advisory Committee on Criminal Rules which has over the past twenty-five years submitted several proposals authorizing government depositions.

The earlier drafts of the Federal Rules of Criminal Procedure proposed that the government be allowed to take depositions. Orfield, The Federal Rules of Criminal Procedure, 33 Calif.L.Rev. 543, 559 (1945). The Fifth Draft of what became rule 15 (then rule 20) dated June 1942, was submitted to the Supreme Court for comment. The court had a number of unfavorable comments about allowing government depositions. These comments were not published. The only reference to the fact that the court made comments is in 2 Orfield, Criminal Procedure under the Federal Rules § 15:1 (1966); and Orfield, Depositions in Federal Criminal Procedure, 9 S.C.L.Q. 376, 380-381 (1957).

The Advisory Committee, in the 1940's, continued to recommend the adoption of a provision authorizing government depositions. The final draft submitted to the Supreme Court contained a section providing:

The following additional requirements shall apply if the deposition is taken at the instance of the government or of a witness. The officer having custody of a defendant shall be notified of the time and place set for examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall be given notice and shall have the right to be present at the examination. The government shall pay in advance to the defendant's attorney and a defendant not in custody expenses of travel and subsistence for attendance at the examination.

See 2 Orfield, Criminal Procedure under the Federal Rules § 15:3, pp. 447-448 (1966); Orfield, Depositions in Federal Criminal Procedure, 9 S.C.L.Q. 376, 383 (1957).

The Supreme Court rejected this section in this entirety, thus eliminating the provision for depositions by the government. These changes were made without comment.

The proposal to allow government depositions was renewed in the amendments to the Federal Rules of Criminal Procedure in the early 1960's. The Preliminary Draft of Proposed Amendments to Rules of Criminal Procedure for the United States District Courts (December 1962) proposed to amend rule 15 by eliminating the words "of a defendant" from the first sentence of subdivision (a) and adding a subdivision (g) which was practically identical to the subdivision rejected by the Supreme Court in the original draft of the rules.

The Second Preliminary Draft of Proposed Amendments to Rules of Criminal Procedure for the United States District Courts (March 1964) continued to propose allowing governments depositions. Subdivision (g) was substantially modified, however.

The following additional requirements shall apply if the deposition is taken at the instance of the government or a witness. Both the defendant and his attorney shall be given reasonable advance notice of the time and place set for the examination. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination but his failure to appear after notice and tender of expenses shall constitute a waiver of that right. The government shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination. The government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and which the government would be required to make available to the defendant if the witness were testifying at the trial.

The proposal to authorize government depositions was rejected by the Standing Committee on Rules of Practice and Procedure, C. Wright, Federal Practice and Procedure § 241 at 477 (1969). 4 Barron, Federal Practice and Procedure (Supp. 1967). The Report of the Judicial Conference, submitted to the Supreme Court for approval late in 1965, contained no proposal for an amendment to rule 15. See 39 F.R.D. 69, 168–211 (1966).

When the Organized Crime Control Act of 1970 was originally introduced in the Senate (S. 30) it contained a government deposition provision which was similar to the 1964 proposal of the Criminal Rules Advisory Committee, except that the original bill (S. 30) failed to provide standards to control the use of depositions at the trial. For an explanation and defense of the original proposal see McClellan, The Organized Crime Act (S. 30) or Its Critics: Which Threatens Civil Liberties?, 46 Notre Dame Lawyer 55, 100–108 (1970). This omission was remedied, prior to passage, with the addition of what is now 18 U.S.C. § 3503(f) which prescribes the circumstances in which a deposition can be used. The standards are the same as those in former rule 15(e) with the addition of language allowing the use of the deposition when "the witness refuses in the trial or hearing to testify concerning the subject of the deposition or the part offered."

Before the Organized Crime Control Act of 1970 was enacted an additional amendment was added providing that the right of the government to take a deposition is limited to cases in which the Attorney General certifies that the defendant is "believed to have participated in an organized criminal activity" [18 U.S.C. § 3503(a)]. The argument in favor of the amendment was that the whole purpose of the act was to deal with organized crime and therefore its provisions, including that providing for government depositions, should be limited to organized crime type cases.

There is another aspect of Advisory Committee history which is relevant. In January 1970, the Advisory Committee circulated proposed changes in rule 16, one of which gives the government, when it has disclosed the identity of its witnesses, the right to take a deposition and use it "in the event the witness has become unavailable without the fault of the government or if the witness has changed his testimony." [See Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure for the United States District Courts, rule 16(a)(1)(vi) (January 1970).] This provision is now incorporated within rule 16(a)(1)(v).

Because neither the court nor the standing committee gave reasons for rejecting the government deposition proposal, it is not possible to know why they were not approved. To the extent that the rejection was based upon doubts as to the constitutionality of such a proposal, those doubts now seem resolved by *California* v. *Green*, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970).

On the merits, the proposal to allow the government to take depositions is consistent with the revision of rule 16 and with section 804(b)(1) of the Rules of Evidence for the United States Courts and Magistrates (November 1971) which provides that the following is not excluded by the hearsay rule if the declarant is unavailable:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered.

Subdivision (a) is revised to provide that the government as well as the defendant is entitled to take a deposition. The phrase "whenever due to special circumstances of the case it is in the interest of justice," is intended to make clear that the decision by the court as to whether to order the taking of a deposition shall be made in the context of the circumstances of the particular case. The principal objective is the preservation of evidence for use at trial. It is not to provide a method of pretrial discovery nor primarily for the purpose of obtaining a basis for later cross-examination of an adverse witness. Discovery is a matter dealt with in rule 16. An obviously important factor is whether a deposition will expedite, rather than delay, the administration of criminal justice. Also important is the presence or absence of factors which determine the use of a deposition at the trial, such as the agreement of the parties to use of the deposition; the possible unavailability of the witness; or the possibility that coercion may be used upon the witness to induce him to change his testimony or not to testify. See rule 16(a)(1)(v).

Subdivision (a) also makes explicit that only the "testimony of a prospective witness of a party" can be taken. This means the party's own witness and does not authorize a discovery deposition of an adverse witness. The language "for use at trial" is intended to give further emphasis to the importance of the criteria for use specified in subdivision (e).

In subdivision (b) reference is made to the defendant in custody. If he is in state custody, a writ of habeas corpus ad testificandum (to produce the prisoner for purposes of testimony) may be required to accomplish his presence.

In subdivision (d) the language "except as otherwise provided in these rules" is meant to make clear that the subpoena provisions of rule 17 control rather than the provisions of the civil rules.

The use of the phrase "and manner" in subdivision (d)(2) is intended to emphasize that the authorization is not to conduct an adverse examination of an opposing witness.

In subdivision (e) the phrase "as substantive evidence" is added to make clear that the deposition can be used as evidence in chief as well as for purposes of impeachment.

Subdivision (e) also makes clear that the deposition can be used as affirmative evidence whenever the witness is available but gives testimony inconsistent with that given in the deposition. A California statute which contained a similar provision was held constitutional in *California* v. *Green*, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970). This is also consistent with section 801(d)(1) of the Rules of Evidence for United States Courts and Magistrates (Nov. 1971).

Subdivision (f) is intended to insure that a record of objections and the grounds for the objections is made at the time the deposition is taken when the witness is available so that the witness can be examined further, if necessary, on the point of the objection so that there will be an adequate record for the court's later ruling upon the objection.

Subdivision (g) uses the "unavailability" definition of the Rules of Evidence for the United States Courts and Magistrates, 804(a) (Nov. 1971).

Subdivision (h) is intended to make clear that the court always has authority to order the taking of a deposition, or to allow the use of a deposition, where there is an agreement of the parties to the taking or to the use.

Notes of Committee on the Judiciary, House Report No. 94-247

A. Amendments Proposed by the Supreme Court. Rule 15 of the Federal Rules of Criminal Procedure provides for the taking of depositions. The present rule permits only the defendant to move that a deposition of a prospective witness be taken. The court may grant the motion if it appears that (a) the prospective witness will be unable to attend or be prevented from attending the trial, (b) the prospective witness' testimony is material, and (c) the prospective witness' testimony is necessary to prevent a failure of justice.

The Supreme Court promulgated several amendments to Rule 15. The more significant amendments are described below.

Subdivision (a) as proposed to be amended permits either party to move the court for the taking of a deposition of a witness. However, a party may only move to take the deposition of one of its own witnesses, not one of the adversary party's witnesses.

Subdivision (c) as proposed to be amended provides that whenever a deposition is taken at the instance of the government or of an indigent defendant, the expenses of the taking of the deposition must be paid by the government.

Subdivision (e) as proposed to be amended provides that part or all of the deposition may be used at trial as substantive evidence if the witness is "unavailable" or if the witness gives testimony inconsistent with his deposition.

Subdivision (b)[1] as proposed to be amended defines "unavailable." "Unavailable" as a witness includes situations in which the deponent:

(1) is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his deposition; or

(2) persists in refusing to testify concerning the subject matter of his deposition despite an order of the judge to do so; or

(3) testifies to a lack of memory of the subject matter of his deposition; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his deposition has been unable to procure his attendance by process or other reasonable means. A deponent is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his deposition for the purpose of preventing the witness from attending or testifying.

B. Committee Action. The Committee narrowed the definition of "unavailability" in subdivision (g). The Committee deleted language from that subdivision that provided that a witness was "unavailable" if the court exempts him from testifying at the trial on the ground of privilege. The Committee does not want to encourage the use of depositions at trial, especially in view of the importance of having live testimony from a witness on the witness stand.

The Committee added a provision to subdivision (b) to parallel the provision of Rule 43(b)(2). This is to make it clear that a disruptive defendant may be removed from the place where a deposition is being taken.

The Committee added language to subdivision (c) to make clear that the government must pay for the cost of the transcript of a deposition when the deposition is taken at the instance of an indigent defendant or of the government. In order to use a deposition at trial, it must be transcribed. The proposed rule did not explicitly provide for payment of the cost of transcribing, and the Committee change rectifies this.

The Committee notes that subdivision (e) permits the use of a deposition when the witness "gives testimony at the trial or hearing inconsistent with his deposition." Since subdivision (e) refers to the rules of evidence, the Committee understands that the Federal Rules of Evidence will govern the admissibility and use of the deposition. The Committee, by adopting subdivision (e) as proposed to be amended by the Supreme Court, intends the Federal Rules of Evidence to govern the admissibility and use of the deposition.

The Committee believes that Rule 15 will not encourage trials by deposition. A deposition may be taken only in "exceptional circumstances" when "it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved. * * *" A deposition, once it is taken, is not automatically admissible at trial, however. It may only be used at trial if the witness is unavailable, and the rule narrowly defines unavailability. The procedure established in Rule 15 is similar to the procedure established by the Organized Crime Control Act of 1970 for the taking and use of depositions in organized crime cases. See 18 U.S.C. 3503.

Conference Committee Notes, House Report No. 94-414

Rule 15 deals with the taking of depositions and the use of depositions at trial. Rule 15(e) permits a deposition to be used if the witness is unavailable. Rule 15(g) defines that term.

The Supreme Court's proposal defines five circumstances in which the witness will be considered unavailable. The House version of the bill deletes a provision that said a witness is unavailable if he is exempted at trial, on the ground of privilege, from testifying about the subject matter of his deposition. The Senate version of the bill by cross reference to the Federal Rules of Evidence, restores the Supreme Court proposal.

The Conference adopts the Senate provision.

References in Text

The Federal Rules of Evidence, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Effective Date of Amendments Proposed April 22, 1974; Effective Date of 1975 Amendments

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

Cross References

Affidavit upon motion, see rule 47.

Assignment of counsel, see rule 44.

Demands for production of statements and reports of witnesses, see section 3500 of this title.

[1] So in original. Probably should be "(g)".

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.
Subpoena and place for taking deposition, see rule 17.

FEDERAL RULES OF CIVIL PROCEDURE

Deposition of witnesses upon written interrogatories, see rule 31, Title 28, Appendix, Judiciary and Judicial Procedure.
Depositions, see rules 26 to 32 and 37.
Interrogatories to a party, see rule 33.

Rule 16. Discovery and Inspection

(a) Disclosure of Evidence by the Government

(1) *Information Subject to Disclosure*

(A) *Statement of Defendant.* Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

(B) *Defendant's Prior Record.* Upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(C) *Documents and Tangible Objects.* Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) *Reports of Examinations and Tests.* Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(2) *Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. § 3500.

(3) *Grand Jury Transcripts.* Except as provided in Rule 6 and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

(b) Disclosure of Evidence by the Defendant

(1) *Information Subject to Disclosure*

(A) *Documents and Tangible Objects.* If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) *Reports of Examinations and Tests.* If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(2) *Information Not Subject to Disclosure.* Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his agents or attorneys.

(c) Continuing Duty to Disclose

If, prior to or during trial, a party discovers additional evidence or material previously re-

quested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) Regulation of Discovery

(1) *Protective and Modifying Orders.* Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) *Failure to Comply With a Request.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi Witnesses

Discovery of alibi witnesses is governed by Rule 12.1.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(20)-(28), 89 Stat. 374, 375; Dec. 12, 1975, Pub. L. 94-149, § 5, 89 Stat. 806.)

NOTES OF ADVISORY COMMITTEE ON RULES

Whether under existing law discovery may be permitted in criminal cases is doubtful, *United States* v. *Rosenfeld*, 57 F.2d 74, C.C.A. 2d, certiorari denied, 286 U.S. 556, 52 S.Ct. 642, 76 L.Ed. 1290. The courts have, however, made orders granting to the defendant an opportunity to inspect impounded documents belonging to him, *United States* v. *B. Goedde and Co.*, 40 Fed.Supp. 523, 534, E.D.Ill. The rule is a restatement of this procedure. In addition, it permits the procedure to be invoked in cases of objects and documents obtained from others by seizure or by process, on the theory that such evidential matter would probably have been accessible to the defendant if it had not previously been seized by the prosecution. The entire matter is left within the discretion of the court.

1966 AMENDMENT

The extent to which pretrial discovery should be permitted in criminal cases is a complex and controversial issue. The problems have been explored in detail in recent legal literature, most of which has been in favor of increasing the range of permissible discovery. See, e.g. Brennan, The Criminal Prosecution: Sporting Event or Quest for Truth, 1963 Wash. U.L.Q. 279; Everett, Discovery in Criminal Cases—In Search of a Standard, 1964 Duke L.J. 477; Fletcher, Pretrial Discovery in State Criminal Cases, 12 Stan. L. Rev. 293 (1960); Goldstein, The State and the Accused: Balance of Advantage in Criminal Procedure, 69 Yale L.J. 1149, 1172-1198 (1960); Krantz, Pretrial Discovery in Criminal Cases: A Necessity for Fair and Impartial Justice, 42 Neb. L. Rev. 127 (1962); Louisell, Criminal Discovery: Dilemma Real or Apparent, 49 Calif. L. Rev. 56 (1961); Louisell, The Theory of Criminal Discovery and the Practice of Criminal Law, 14 Vand. L. Rev. 921 (1961); Moran, Federal Criminal Rules Changes: Aid or Illusion for the Indigent Defendant? 51 A.B.A.J. 64 (1965); Symposium, Discovery in Federal Criminal Cases, 33 F.R.D. 47-128 (1963); Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U.L. Rev. 228 (1964); Developments in the Law—Discovery, 74 Harv. L. Rev. 940, 1051-1063. Full judicial exploration of the conflicting policy considerations will be found in *State* v. *Tune*, 13 N.J. 203, 98 A. 2d 881 (1953) and *State* v. *Johnson*, 28 N.J. 133, 145 A. 2d 313 (1958); cf. *State* v. *Murphy*, 36 N.J. 172, 175 A. 2d 622 (1961); *State* v. *Moffa*, 36 N.J. 219, 176 A. 2d 1 (1961). The rule has been revised to expand the scope of pretrial discovery. At the same time provisions are made to guard against possible abuses.

Subdivision (a).—The court is authorized to order the attorney for the government to permit the defendant to inspect and copy or photograph three different types of material:

(1) Relevant written or recorded statements or confessions made by the defandant, or copies thereof. The defendant is not required to designate because he may not always be aware that his statements or confessions are being recorded. The government's obligation is limited to production of such statements as are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government. Discovery of statements and confessions is in line with what the Supreme Court has described as the "better practice" (*Cicenia* v. *LaGay*, 357 U.S. 504, 511 (1958)), and with the law in a number of states. See e.g., Del. Rules Crim. Proc., Rule 16; Ill. Stat. Ch. 38, § 729; Md. Rules Proc., Rule 728; *State* v. *McGee*, 91 Ariz. 101, 370 P. 2d 261 (1962); *Cash* v. *Superior Court*, 53 Cal. 2d 72, 346 P. 2d 407 (1959); *State* v. *Bickham*, 239 La. 1094, 121 So. 2d 207, cert. den. 364 U.S. 874 (1960); *People* v. *Johnson*, 356 Mich. 619, 97 N.W. 2d 739 (1959); *State* v. *Johnson*, supra; *People* v. *Stokes*, 24 Miss. 2d 755, 204 N.Y. Supp. 2d 827 (Ct. Gen. Sess. 1960). The admendment also makes it clear that discovery extends to recorded as well as written statements. For state cases upholding the discovery of recordings, see, e.g., *People* v. *Cartier*, 51 Cal. 2d 590, 335 P.2d 114 (1959); *State* v. *Minor*, 177 A.2d 215 (Del. Super. Ct. 1962).

(2) Relevant results or reports of physical or mental examinations, and of scientific tests or experiments (including fingerprint and handwriting comparisons) made in connection with the particular case, or copies thereof. Again the defendant is not required to designate but the government's obligation is limited to production of items within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government. With respect to results or reports of scientific tests or experiments the range of materials which must be produced by the government is further limited to those made in connection with the particular case. Cf. Fla. Stats. § 909.18; *State* v. *Superior Court*, 90 Ariz. 133, 367 P. 2d 6 (1961); *People* v. *Cooper*, 53 Cal. 2d 755, 770, 3 Cal. Rptr. 148, 157, 349 P. 2d 1964, 973 (1960); *People* v. *Stokes*, supra, at 762, 204 N.Y. Supp. 2d at 835.

(3) Relevant recorded testimony of a defendant before a grand jury. The policy which favors pretrial disclosure to a defendant of his statements to government agents also supports, pretrial disclosure of his testimony before a grand jury. Courts, however, have tended to require a showing of special circumstances before ordering such disclosure. See, e.g., *United States* v. *Johnson*, 215 F. Supp. 300 (D. Md. 1963). Disclosure is required only where the statement has been recorded and hence can be transcribed.

Subdivision (b).—This subdivision authorizes the court to order the attorney for the government to permit the defendant to inspect the copy or photograph all other books, papers, documents, tangible ob-

jects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government. Because of the necessarily broad and general terms in which the items to be discovered are described, several limitations are imposed:

(1) While specific designation is not required of the defendant, the burden is placed on him to make a showing of materiality to the preparation of his defense and that his request is reasonable. The requirement of reasonableness will permit the court to define and limit the scope of the government's obligation to search its files while meeting the legitimate needs of the defendant. The court is also authorized to limit discovery to portions of items sought.

(2) Reports, memoranda, and other internal government documents made by government agents in connection with the investigation or prosecution of the case are exempt from discovery. Cf. *Palermo* v. *United States*, 360 U.S. 343 (1959); *Ogden* v. *United States*, 303 F. 2d 724 (9th Cir. 1962).

(3) Except as provided for reports of examinations and tests in subdivision (a)(2), statements made by government witnesses or prospective government witnesses to agents of the government are also exempt from discovery except as provided by 18 U.S.C. § 3500.

Subdivision (c).—This subdivision permits the court to condition a discovery order under subdivision (a)(2) and subdivision (b) by requiring the defendant to permit the government to discover similar items which the defendant intends to produce at the trial and which are within his possession, custody or control under restrictions similar to those placed in subdivision (b) upon discovery by the defendant. While the government normally has resources adequate to secure the information necessary for trial, there are some situations in which mutual disclosure would appear necessary to prevent the defendant from obtaining an unfair advantage. For example, in cases where both prosecution and defense have employed experts to make psychiatric examinations, it seems as important for the government to study the opinions of the experts to be called by the defendant in order to prepare for trial as it does for the defendant to study those of the government's witnesses. Or in cases (such as antitrust cases) in which the defendant is well represented and well financed, mutual disclosure so far as consistent with the privilege against self-incrimination would seem as appropriate as in civil cases. State cases have indicated that a requirement that the defendant disclose in advance of trial materials which he intends to use on his own behalf at the trial is not a violation of the privilege against self-incrimination. See *Jones* v. *Superior Court*, 58 Cal. 2d 56, 22 Cal. Rptr. 879, 372 P. 2d 919 (1962); *People* v. *Lopez*, 60 Cal. 2d 223, 32 Cal. Rptr. 424, 384 P. 2d 16 (1963); Traynor, Ground Lost and Found in Criminal Discovery. 39 N.Y.U.L. Rev. 228, 246 (1964); Comment, The Self-Incrimination Privilege: Barrier to Criminal Discovery, 51 Calif. L. Rev. 135 (1963); Note, 76 Harv. Rev. 828 (1963).

Subdivision (d).—This subdivision is substantially the same as the last sentence of the existing rule.

Subdivision (e).—This subdivision gives the court authority to deny, restrict or defer discovery upon a sufficient showing. Control of the abuses of discovery is necessary if it is to be expanded in the fashion proposed in subdivisions (a) and (b). Among the considerations to be taken into account by the court will be the safety of witnesses and others, a particular danger of perjury or witness intimidation, the protection of information vital to the national security, and the protection of business enterprises from economic reprisals.

For an example of a use of a protective order in state practice, see *People* v. *Lopez*, 60 Cal. 2d 223, 32 Cal. Rptr. 424, 384 P. 2d 16 (1963). See also Brennan, Remarks on Discovery, 33 F.R.D. 56, 65 (1963); Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U.L. Rev. 228, 244, 250.

In some cases it would defeat the purpose of the protective order if the government were required to make its showing in open court. The problem arises in its most extreme form where matters of national security are involved. Hence a procedure is set out where upon motion by the government the court may permit the government to make its showing, in whole or in part, in a written statement to be inspected by the court in camera. If the court grants relief based on such showing, the government's statement is to be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant, Cf. 18 U.S.C. § 3500.

Subdivision (f).—This subdivision is designed to encourage promptness in making discovery motions and to give the court sufficient control to prevent unnecessary delay and court time consequent upon a multiplication of discovery motions. Normally one motion should encompass all relief sought and a subsequent motion permitted only upon a showing of cause. Where pretrial hearings are used pursuant to Rule 17.1, discovery issues may be resolved at such hearings.

Subdivision (g).—The first sentence establishes a continuing obligation on a party subject to a discovery order with respect to material discovered after initial compliance. The duty provided is to notify the other party, his attorney or the court of the existence of the material. A motion can then be made by the other party for additional discovery and, where the existence of the material is disclosed shortly before or during the trial, for any necessary continuance.

The second sentence gives wide discretion to the court in dealing with the failure of either party to comply with a discovery order. Such discretion will permit the court to consider the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances.

1974 Amendment

Rule 16 is revised to give greater discovery to both the prosecution and the defense. Subdivision (a) deals with disclosure of evidence by the government. Subdivision (b) deals with disclosure of evidence by the defendant. The majority of the Advisory Committee is of the view that the two—prosecution and defense discovery—are related and that the giving of a broader right of discovery to the defense is dependent upon giving also a broader right of discovery to the prosecution.

The draft provides for a right of prosecution discovery independent of any prior request for discovery by the defendant. The Advisory Committee is of the view that this is the most desirable approach to prosecution discovery. See American Bar Association, Standards Relating to Discovery and Procedure Before Trial, pp. 7, 43–46 (Approved Draft, 1970).

The language of the rule is recast from "the court may order" or "the court shall order" to "the government shall permit" or "the defendant shall permit." This is to make clear that discovery should be accomplished by the parties themselves, without the necessity of a court order unless there is dispute as to whether the matter is discoverable or a request for a protective order under subdivision (d)(1). The court, however, has the inherent right to enter an order under this rule.

The rule is intended to prescribe the minimum amount of discovery to which the parties are entitled. It is not intended to limit the judge's discretion to order broader discovery in appropriate cases. For example, subdivision (a)(3) is not intended to deny a judge's discretion to order disclosure of grand jury minutes where circumstances make it appropriate to do so.

Subdivision (a)(1)(A) amends the old rule to provide, upon request of the defendant, the government shall permit discovery if the conditions specified in subdivision (a)(1)(A) exist. Some courts have construed the current language as giving the court discretion as to whether to grant discovery of defendant's statements. See *United States* v. *Kaminsky*, 275 F. Supp. 365 (S.D.N.Y. 1967), denying discovery because the defen-

dant did not demonstrate that his request for discovery was warranted; *United States* v. *Diliberto*, 264 F.Supp. 181 (S.D.N.Y. 1967), holding that there must be a showing of actual need before discovery would be granted; *United States* v. *Louis Carreau*, Inc., 42 F.R.D. 408 (S.D.N.Y. 1967), holding that in the absence of a showing of good cause the government cannot be required to disclose defendant's prior statements in advance of trial. In *United States* v. *Louis Carreau*, Inc., at p. 412, the court stated that if rule 16 meant that production of the statements was mandatory, the word "shall" would have been used instead of "may." See also *United States* v. *Wallace*, 272 F.Supp. 838 (S.D.N.Y. 1967); *United States* v. *Wood*, 270 F. Supp. 963 (S.D.N.Y. 1967); *United States* v. *Leighton*, 265 F.Supp. 27 (S.D.N.Y. 1967); *United States* v. *Longarzo*, 43 F.R.D. 395 (S.D.N.Y. 1967); *Loux* v. *United States*, 389 F.2d 911 (9th Cir. 1968); and the discussion of discovery in Discovery in Criminal Cases, 44 F.R.D. 481 (1968). Other courts have held that even though the current rules make discovery discretionary, the defendant need not show cause when he seeks to discover his own statements. See *United States* v. *Aadal*, 280 F.Supp. 859 (S.D.N.Y. 1967); *United States* v. *Federmann*, 41 F.R.D. 339 (S.D.N.Y. 1967); and *United States* v. *Projansky*, 44 F.R.D. 550 (S.D.N.Y. 1968).

The amendment making disclosure mandatory under the circumstances prescribed in subdivision (a)(1)(A) resolves such ambiguity as may currently exist, in the direction of more liberal discovery. See C. Wright, Federal Practice and Procedure: Criminal § 253 (1969, Supp. 1971), Rezneck, The New Federal Rules of Criminal Procedure, 54 Geo.L.J. 1276 (1966); Fla.Stat.Ann. § 925.05 (Supp. 1971-1972); N.J.Crim. Prac. Rule 35-11(a) (1967). This is done in the view that broad discovery contributes to the fair and efficient administration of criminal justice by providing the defendant with enough information to make an informed decision as to plea; by minimizing the undesirable effect of surprise at the trial; and by otherwise contributing to an accurate determination of the issue of guilt or innocence. This is the ground upon which the American Bar Association Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970) has unanimously recommended broader discovery. The United States Supreme Court has said that the pretrial disclosure of a defendant's statements "may be the 'better practice.'" *Cicenia* v. *La Gay*, 357 U.S. 504, 511, 78 S.Ct. 1297, 2 L.Ed.2d 1523 (1958). See also *Leland* v. *Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L. Ed. 1302 (1952); *State* v. *Johnson*, 28 N.J. 133, 145 A.2d 313 (1958).

The requirement that the statement be disclosed prior to trial, rather than waiting until the trial, also contributes to efficiency of administration. It is during the pretrial stage that the defendant usually decides whether to plead guilty. See *United States* v. *Projansky*, supra. The pretrial stage is also the time during which many objections to the admissibility of types of evidence ought to be made. Pretrial disclosure ought, therefore, to contribute both to an informed guilty plea practice and to a pretrial resolution of admissibility questions. See ABA, Standards Relating to Discovery and Procedure Before Trial § 1.2 and Commentary pp. 40-43 (Approved Draft, 1970).

The American Bar Association Standards mandate the prosecutor to make the required disclosure even though not requested to do so by the defendant. The proposed draft requires the defendant to request discovery, although obviously the attorney for the government may disclose without waiting for a request, and there are situations in which due process will require the prosecution, on its own, to disclose evidence "helpful" to the defense. *Brady* v. *Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *Giles* v. *Maryland*, 386 U.S. 66, 87 S.Ct. 793, 17 L. Ed.2d 737 (1967).

The requirement in subdivision (a)(1)(A) is that the government produce "statements" without further discussion of what "statement" includes. There has been some recent controversy over what "statements" are subject to discovery under the current rule. See Discovery in Criminal Cases, 44 F.R.D. 481 (1968); C. Wright, Federal Practice and Procedure: Criminal § 253, pp. 505-506 (1969, Supp. 1971). The kinds of "statements" which have been held to be within the rule include "substantially verbatim and contemporaneous" statements, *United States* v. *Elife*, 43 F.R.D. 23 (S.D.N.Y. 1967); statements which reproduce the defendant's "exact words," *United States* v. *Armantrout*, 278 F.Supp. 517 (S.D.N.Y. 1968); a memorandum which was not verbatim but included the substance of the defendant's testimony, *United States* v. *Scharf*, 267 F.Supp. 19 (S.D.N.Y. 1967); Summaries of the defendant's statements, *United States* v. *Morrison*, 43 F.R.D. 516 (N.D.Ill.1967); and statements discovered by means of electronic surveillance, *United States* v. *Black*, 282 F.Supp. 35 (D.D.C. 1968). The court in *United States* v. *Iovinelli*, 276 F.Supp. 629, 631 (N.D.Ill.1967), declared that "statements" as used in old rule 16 is not restricted to the "substantially verbatim recital of an oral statement" or to statements which are a "recital of past occurrences."

The Jencks Act, 18 U.S.C. § 3500, defines "statements" of government witnesses discoverable for purposes of cross-examination as: (1) a "written statement" signed or otherwise approved by a witness, (2) "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the government and recorded contemporaneously with the making of such oral statement." 18 U.S.C. § 3500(e). The language of the Jencks Act has most often led to a restrictive definition of "statements," confining "statements" to the defendant's "own words." See *Hanks* v. *United States*, 388 F.2d 171 (10th Cir. 1968), and *Augenblick* v. *United States*, 377 F.2d 586, 180 Ct.Cl. 131 (1967).

The American Bar Association's Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970) do not attempt to define "statements" because of a disagreement among members of the committee as to what the definition should be. The majority rejected the restrictive definition of "statements" contained in the Jencks Act, 18 U.S.C. § 3500(e), in the view that the defendant ought to be able to see his statement in whatever form it may have been preserved in fairness to the defendant and to discourage the practice, where it exists, of destroying original notes, after transforming them into secondary transcriptions, in order to avoid cross-examination based upon the original notes. See *Campbell* v. *United States*, 373 U.S. 487, 83 S.Ct. 1356, 10 L.Ed.2d 501 (1963). The minority favored a restrictive definition of "statements" in the view that the use of other than "verbatim" statements would subject witnesses to unfair cross-examination. See American Bar Association's Standards Relating to Discovery and Procedure Before Trial pp. 61-64 (Approved Draft, 1970). The draft of subdivision (a)(1)(A) leaves the matter of the meaning of the term unresolved and thus left for development on a case-by-case basis.

Subdivision (a)(1)(A) also provides for mandatory disclosure of a summary of any oral statement made by defendant to a government agent which the attorney for the government intends to use in evidence. The reasons for permitting the defendant to discover his own statements seem obviously to apply to the substance of any oral statement which the government intends to use in evidence at the trial. See American Bar Association Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(ii) (Approved Draft, 1970). Certainly disclosure will facilitate the raising of objections to admissibility prior to trial. There have been several conflicting decisions under the current rules as to whether the government must disclose the substance of oral statements of the defendant which it has in its possession. Cf. *United States* v. *Baker*, 262 F.Supp. 657 (D.C.D.C.1966); *United States* v. *Curry*, 278 F.Supp. 508 (N.D.Ill.1967); *United States* v. *Morrison*, 43 F.R.D. 516 (ND.Ill.1967); *United States* v. *Reid*, 43 F.R.D. 520 (ND.Ill.1967); *United States* v. *Armantrout*, 278 F.Supp. 517 (S.D.N.Y.1968); and

United States v. *Elife*, 43 F.R.D. 23 (S.D.N.Y.1967). There is, however, considerable support for the policy of disclosing the substance of the defendant's oral statement. Many courts have indicated that this is a "better practice" than denying such disclosure. E.g., *United States* v. *Curry*, supra; *Loux* v. *United States*, 389 F.2d 911 (9th Cir. 1968); and *United States* v. *Baker*, supra.

Subdivision (a)(1)(A) also provides for mandatory disclosure of any "recorded testimony" which defendant gives before a grand jury if the testimony "relates to the offense charged." The present rule is discretionary and is applicable only to those of defendant's statements which are "relevant."

The traditional rationale behind grand jury secrecy—protection of witnesses—does not apply when the accused seeks discovery of his own testimony. Cf. *Dennis* v. *United States*, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966); and *Allen* v. *United States*, 129 U.S.App.D.C. 61, 390 F.2d 476 (1968). In interpreting the rule many judges have granted defendant discovery without a showing of need or relevance. *United States* v. *Gleason*, 259 F. Supp. 282 (S.D.N.Y. 1966); *United States* v. *Longarzo*, 43 F.R.D. 395 (S.D.N.Y. 1967); and *United States* v. *United Concrete Pipe Corp.*, 41 F.R.D. 538 (N.D.Tex. 1966). Making disclosure mandatory without a showing of relevance conforms to the recommendation of the American Bar Association Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(iii) and Commentary pp. 64–66 (Approved Draft, 1970). Also see Note, Discovery by a Criminal Defendant of His Own Grand-Jury Testimony, 68 Columbia L.Rev. 311 (1968).

In a situation involving a corporate defendant, statements made by present and former officers and employees relating to their employment have been held discoverable as statements of the defendant. *United States* v. *Hughes*, 413 F.2d 1244 (5th Cir. 1969). The rule makes clear that such statements are discoverable if the officer or employee was "able legally to bind the defendant in respect to the activities involved in the charges."

Subdivision (a)(1)(B) allows discovery of the defendant's prior criminal record. A defendant may be uncertain of the precise nature of his prior record and it seems therefore in the interest of efficient and fair administration to make it possible to resolve prior to trial any disputes as to the correctness of the relevant criminal record of the defendant.

Subdivision (a)(1)(C) gives a right of discovery of certain tangible objects under the specified circumstances. Courts have construed the old rule as making disclosure discretionary with the judge. Cf. *United States* v. *Kaminsky*, 275 F. Supp. 365 (S.D.N.Y. 1967); *Gevinson* v. *United States*, 358 F.2d 761 (5th Cir. 1966), cert. denied, 385 U.S. 823, 87 S.Ct. 51, 17 L.Ed.2d 60 (1966); and *United States* v. *Tanner*, 279 F.Supp. 457 (N.D.Ill. 1967). The old rule requires a "showing of materiality to the preparation of his defense and that the request is reasonable." The new rule requires disclosure if any one of three situations exists: (a) the defendant shows that disclosure of the document or tangible object is material to the defense, (b) the government intends to use the document or tangible object in its presentation of its case in chief, or (c) the document or tangible object was obtained from or belongs to the defendant.

Disclosure of documents and tangible objects which are "material" to the preparation of the defense may be required under the rule of *Brady* v. *Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), without an additional showing that the request is "reasonable." In *Brady* the court held that "due process" requires that the prosecution disclose evidence favorable to the accused. Although the Advisory Committee decided not to codify the Brady Rule, the requirement that the government disclose documents and tangible objects "material to the preparation of his defense" underscores the importance of disclosure of evidence favorable to the defendant.

Limiting the rule to situations in which the defendant can show that the evidence is material seems unwise. It may be difficult for a defendant to make this showing if he does not know what the evidence is. For this reason subdivision (a)(1)(C) also contains language to compel disclosure if the government intends to use the property as evidence at the trial or if the property was obtained from or belongs to the defendant. See ABA Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(v) and Commentary pp. 68–69 (Approved Draft, 1970). This is probably the result under old rule 16 since the fact that the government intends to use the physical evidence at the trial is probably sufficient proof of "materiality." C. Wright, Federal Practice and Procedure: Criminal § 254 especially n. 70 at p. 513 (1969, Supp. 1971). But it seems desirable to make this explicit in the rule itself.

Requiring disclosure of documents and tangible objects which "were obtained from or belong to the defendant" probably is also making explicit in the rule what would otherwise be the interpretation of "materiality." See C. Wright, Federal Practice and Procedure: Criminal § 254 at p. 510 especially n. 58 (1969, Supp. 1971).

Subdivision (a)(1)(C) is also amended to add the word "photographs" to the objects previously listed. See ABA Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(v) (Approved Draft, 1970).

Subdivision (a)(1)(D) makes disclosure of the reports of examinations and tests mandatory. This is the recommendation of the ABA Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(iv) and Commentary pp. 66–68 (Approved Draft, 1970). The obligation of disclosure applies only to scientific tests or experiments "made in connection with the particular case." So limited, mandatory disclosure seems justified because: (1) it is difficult to test expert testimony at trial without advance notice and preparation; (2) it is not likely that such evidence will be distorted or misused if disclosed prior to trial; and (3) to the extent that a test may be favorable to the defense, its disclosure is mandated under the rule of *Brady* v. *Maryland*, supra.

Subdivision (a)(1)(E) is new. It provides for discovery of the names of witnesses to be called by the government and of the prior criminal record of these witnesses. Many states have statutes or rules which require that the accused be notified prior to trial of the witnesses to be called against him. See, e.g., Alaska R.Crim.Proc. 7(c); Ariz.R.Crim.Proc. 153, 17 A.R.S. (1956); Ark.Stat.Ann. § 43–1001 (1947); Cal.Pen.Code § 995n (West 1957); Colo.Rev.Stat.Ann. §§ 39–3–6, 39–4–2 (1963); Fla.Stat.Ann. § 906.29 (1944); Idaho Code Ann. § 19–1404 (1948); Ill.Rev.Stat. ch. 38, § 114–9 (1970); Ind.Ann.Stat. § 9–903 (1956), IC 1971, 35–1–16–3; Iowa Code Ann. § 772.3 (1950); Kan.Stat.Ann. § 62–931 (1964); Ky.R.Crim. Proc. 6.08 (1962); Mich.Stat.Ann. § 28.980, M.C.L.A. § 767.40 (Supp.1971); Minn.Stat.Ann. § 628.08 (1947); Mo.Ann.Stat. § 545.070 (1953); Mont.Rev. Codes Ann. § 95–1503 (Supp. 1969); Neb.Rev.Stat. § 29–1602 (1964); Nev.Rev.Stat. § 173.045 (1967); Okl.Stat. tet. 22, § 384 (1951); Ore.Rev.Stat. § 132.580 (1969); Tenn. Code Ann. § 40–1708 (1955); Utah Code Ann. § 77–20–3 (1953). For examples of the ways in which these requirements are implemented, see *State* v. *Mitchell*, 181 Kan. 193, 310 P.2d 1063 (1957); *State* v. *Parr*, 129 Mont. 175, 283 P.2d 1086 (1955); *Phillips* v. *State*. 157 Neb. 419, 59 N.W. 598 (1953).

Witnesses' prior statements must be made available to defense counsel after the witness testifies on direct examination for possible impeachment purposes during trial: 18 U.S.C. § 3500.

The American Bar Association's Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(i) (Approved Draft, 1970) require disclosure of both the names and the statements of prosecution witnesses. Subdivision (a)(1)(E) requires only disclosure, prior to trial, of names, addresses, and prior criminal record. It does not require disclosure of the witnesses' state-

ments although the rule does not preclude the parties from agreeing to disclose statements prior to trial. This is done, for example, in courts using the so-called "omnibus hearing."

Disclosure of the prior criminal record of witnesses places the defense in the same position as the government, which normally has knowledge of the defendant's record and the record of anticipated defense witnesses. In addition, the defendant often lacks means of procuring this information on his own. See American Bar Association Standards Relating to Discovery and Procedure Before Trial § 2.1(a)(vi) (Approved Draft, 1970).

A principal argument against disclosure of the identity of witnesses prior to trial has been the danger to the witness, his being subjected either to physical harm or to threats designed to make the witness unavailable or to influence him to change his testimony. Discovery in Criminal cases, 44 F.R.D. 481, 499-500 (1968); Ratnoff, The New Criminal Deposition Statute in Ohio—Help or Hindrance to Justice?, 19 Case Western Reserve L.Rev. 279, 284 (1968). See, e.g., *United States* v. *Estep*, 151 F.Supp. 668, 672-673 (N.D. Tex. 1957):

> Ninety percent of the convictions had in the trial court for sale and dissemination of narcotic drugs are linked to the work and the evidence obtained by an informer. If that informer is not to have his life protected there won't be many informers hereafter.

See also the dissenting opinion of Mr. Justice Clark in *Roviaro* v. *United States*, 353 U.S. 53, 66-67, 77 S.Ct. 623, 1 L.Ed. 2d 639 (1957). Threats of market retaliation against witnesses in criminal antitrust cases are another illustration. *Bergen Drug Co.* v. *Parke, Davis & Company*, 307 F.2d 725 (3d Cir. 1962); and *House of Materials, Inc.* v. *Simplicity Pattern Co.*, 298 F.2d 867 (2d Cir. 1962). The government has two alternatives when it believes disclosure will create an undue risk of harm to the witness: It can ask for a protective order under subdivision (d)(1). See ABA Standards Relating to Discovery and Procedure Before Trial § 2.5(b) (Approved Draft, 1970). It can also move the court to allow the perpetuation of a particular witness's testimony for use at trial if the witness is unavailable or later changes his testimony. The purpose of the latter alternative is to make pretrial disclosure possible and at the same time to minimize any inducement to use improper means to force the witness either to not show up or to change his testimony before a jury. See rule 15.

Subdivision (a)(2) is substantially unchanged. It limits the discovery otherwise allowed by providing that the government need not disclose "reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case" or "statements made by government witnesses or prospective government witnesses." The only proposed change is that the "reports, memoranda, or other internal government documents made by the attorney for the government" are included to make clear that the work product of the government attorney is protected. See C. Wright, Federal Practice and Procedure: Criminal § 254 n. 92 (1969, Supp. 1971); *United States* v. *Rothman*, 179 F.Supp. 935 (W.D.Pa. 1959); Note, "Work Product" in Criminal Discovery, 1966 Wash. U.L.Q. 321; American Bar Association, Standards Relating to Discovery and Procedure Before Trial § 2.6(a) (Approved Draft, 1970); cf. *Hickman* v. *Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed2d 215 (1963), requires the disclosure of evidence favorable to the defendant. This is, of course, not changed by this rule.

Subdivision (a)(3) is included to make clear that recorded proceedings of a grand jury are explicitly dealt with in rule 6 and subdivision (a)(1)(A) of rule 16 and thus are not covered by other provisions such as subdivision (a)(1)(C) which deals generally with discovery of documents in the possession, custody, or control of the government.

Subdivision (a)(4) is designed to insure that the government will not be penalized if it makes a full disclosure of all potential witnesses and then decides not to call one or more of the witnesses listed. This is not, however, intended to abrogate the defendant's right to comment generally upon the government's failure to call witnesses in an appropriate case.

Subdivision (b) deals with the government's right to discovery of defense evidence or, put in other terms, with the extent to which a defendant is required to disclose its evidence to the prosecution prior to trial. Subdivision (b) replaces old subdivision (c).

Subdivision (b) enlarges the right of government discovery in several ways: (1) it gives the government the right to discovery of lists of defense witnesses as well as physical evidence and the results of examinations and tests; (2) it requires disclosure if the defendant has the evidence under his control and intends to use it at trial in his case in chief, without the additional burden, required by the old rule, of having to show, in behalf of the government, that the evidence is material and the request reasonable; and (3) it gives the government the right to discovery without conditioning that right upon the existence of a prior request for discovery by the defendant.

Although the government normally has resources adequate to secure much of the evidence for trial, there are situations in which pretrial disclosure of evidence to the government is in the interest of effective and fair criminal justice administration. For example, the experimental "omnibus hearing" procedure (see discussion in Advisory Committee Note to rule 12) is based upon an assumption that the defendant, as well as the government, will be willing to disclose evidence prior to trial.

Having reached the conclusion that it is desirable to require broader disclosure by the defendant under certain circumstances, the Advisory Committee has taken the view that it is preferable to give the right of discovery to the government independently of a prior request for discovery by the defendant. This is the recommendation of the American Bar Association Standards Relating to Discovery and Procedure Before Trial, Commentary, pp. 43-46 (Approved Draft, 1970). It is sometimes asserted that making the government's right to discovery conditional will minimize the risk that government discovery will be viewed as an infringement of the defendant's constitutional rights. See discussion in C. Wright, Federal Practice and Procedure: Criminal § 256 (1969, Supp.1971); Moore, Criminal Discovery, 19 Hastings L.J. 865 (1968); Wilder, Prosecution Discovery and the Privilege Against Self-Incrimination, 6 Am.Cr.L.Q. 3 (1967). There are assertions that prosecution discovery, even if conditioned upon the defendants being granted discovery, is a violation of the privilege. See statements of Mr. Justice Black and Mr. Justice Douglas, 39 F.R.D. 69, 272, 277-278 19 (1966); C. Wright, Federal Practice and Procedure: Criminal § 256 (1969, Supp. 1971). Several states require defense disclosure of an intended defense of alibi and, in some cases, a list of witnesses in support of an alibi defense, without making the requirement conditional upon prior discovery being given to the defense. E.g., Ariz.R.Crim.P. 162(B), 17 A.R.S. (1956); Ind.Ann.Stat. § 9-1631 to 9-1633 (1956), IC 1971, 35-5-1-1 to 35-5-1-3; Mich.Comp. Laws Ann. §§ 768.20, 768.21 (1968); N.Y. CPL § 250.20 (McKinney's Consol.Laws, c. 11-A, 1971); and Ohio Rev.Code Ann. § 2945.58 (1954). State courts have refused to hold these statutes violative of the privilege against self-incrimination. See *State* v. *Thayer*, 124 Ohio St. 1, 176 N.E. 656 (1931), and *People* v. *Rakiec*, 260 App.Div. 452, 23 N.Y.S.2d 607, aff'd, 289 N.Y. 306, 45 N.E.2d 812 (1942). See also rule 12.1 and Advisory Committee Note thereto.

Some state courts have held that a defendant may be required to disclose, in advance of trial, evidence which he intends to use on his own behalf at trial without violating the privilege against self-incrimination. See *Jones* v. *Superior Court of Nevada County*, 58 Cal.2d 56, 22 Cal.Rptr. 879, 372 P.2d 919 (1962); *People*

v. *Lopez*, 60 Cal.2d 223, 32 Cal.Iptr. 424, 384 P.2d 16 (1963); Comment, The Self-Incrimination Privilege: Barrier to Criminal Discovery?, 51 Calif.L.Rev. 135 (1963); Note, 76 Harv.L.Rev. 838 (1963). The courts in Jones v. Superior Court of Nevada County, supra, suggests that if mandatory disclosure applies only to those items which the accused intends to introduce in evidence at trial, neither the incriminatory nor the involuntary aspects of the privilege against self-incrimination are present.

On balance the Advisory Committee is of the view that an independent right of discovery for both the defendant and the government is likely to contribute to both effective and fair administration. See Louisell, Criminal Discovery and Self-Incrimination: Roger Traynor Confronts the Dilemma, 53 Calif.L.Rev. 89 (1965), for an analysis of the difficulty of weighing the value of broad discovery against the value which inheres in not requiring the defendant to disclose anything which might work to his disadvantage.

Subdivision (b)(1)(A) provides that the defendant shall disclose any documents and tangible objects which he has in his possession, custody, or control and which he intends to introduce in evidence in his case in chief.

Subdivision (b)(1)(B) provides that the defendant shall disclose the results of physical or mental examinations and scientific tests or experiments if (a) they were made in connection with a particular case; (b) the defendant has them under his control; and (c) he intends to offer them in evidence in his case in chief or which were prepared by a defense witness and the results or reports relate to the witness's testimony. In cases where both prosecution and defense have employed experts to conduct tests such as psychiatric examinations, it seems as important for the government to be able to study the results reached by defense experts which are to be called by the defendant as it does for the defendant to study those of government experts. See Schultz, Criminal Discovery by the Prosecution: Frontier Developments and Some Proposals for the Future, 22 N.Y.U.Intra.L.Rev. 268 (1967); American Bar Association, Standards Relating to Discovery and Procedure Before Trial § 3.2 (Supp., Approved Draft, 1970).

Subdivision (b)(1)(C) provides for discovery of a list of witnesses the defendant intends to call in his case in chief. State cases have indicated that disclosure of a list of defense witnesses does not violate the defendant's privilege against self-incrimination. See *Jones* v. *Superior Court of Nevada County*, supra, and *People* v. *Lopez*, supra. The defendant has the same option as does the government if it is believed that disclosure of the identity of a witness may subject that witness to harm or a threat of harm. The defendant can ask for a protective order under subdivision (d)(1) or can take a deposition in accordance with the terms of rule 15.

Subdivision (b)(2) is unchanged, appearing as the last sentence of subdivision (c) of old rule 16.

Subdivision (b)(3) provides that the defendant's failure to introduce evidence or call witnesses shall not be admissible in evidence against him. In states which require pretrial disclosure of witnesses' identity, the prosecution is not allowed to comment upon the defendant's failure to call a listed witness. See *O'Connor* v. *State*, 31 Wis.2d 684, 143 N.W.2d 489 (1966); *People* v. *Mancini*, 6 N.Y.2d 853, 188 N.Y.S.2d 559, 160 N.E.2d 91 (1959); and *State* v. *Cocco*, 73 Ohio App. 182, 55 N.E.2d 430 (1943). This is not, however, intended to abrogate the government's right to comment generally upon the defendant's failure to call witnesses in an appropriate case, other than the defendant's failure to testify.

Subdivision (c) is a restatement of part of old rule 16(g).

Subdivision (d)(1) deals with the protective order. Although the rule does not attempt to indicate when a protective order should be entered, it is obvious that one would be appropriate where there is reason to believe that a witness would be subject to physical or economic harm if his identity is revealed. See *Will* v. *United States*, 389 U.S. 90, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967). The language "by the judge alone" is not meant to be inconsistent with *Alderman* v. *United States*, 394 U.S. 165, 89 S.Ct. 961, 22 L. Ed.2d 176 (1969). In *Alderman* the court points out that there may be appropriate occasions for the trial judge to decide questions relating to pretrial disclosure. See *Alderman* v. *United States*, 394 U.S. at 182 n. 14, 89 S.Ct. 961.

Subdivision (d)(2) is a restatement of part of old rule 16(g) and (d).

Old subdivision (f) of rule 16 dealing with time of motions is dropped because rule 12(c) provides the judge with authority to set the time for the making of pretrial motions including requests for discovery. Rule 12 also prescribes the consequences which follow from a failure to make a pretrial motion at the time fixed by the court. See rule 12(f).

Notes of Committee on the Judiciary House Report No. 94-247

A. Amendments Proposed by the Supreme Court. Rule 16 of the Federal Rules of Criminal Procedure regulates discovery by the defendant of evidence in possession of the prosecution, and discovery by the prosecution of evidence in possession of the defendant. The present rule permits the defendant to move the court to discover certain material. The prosecutor's discovery is limited and is reciprocal—that is, if the defendant is granted discovery of certain items, then the prosecution may move for discovery of similar items under the defendant's control.

As proposed to be amended, the rule provides that the parties themselves will accomplish discovery—no motion need be filed and no court order is necessary. The court will intervene only to resolve a dispute as to whether something is discoverable or to issue a protective order.

The proposed rule enlarges the scope of the defendant's discovery to include a copy of his prior criminal record and a list of the names and addresses, plus record of prior felony convictions, of all witnesses the prosecution intends to call during its case-in-chief. It also permits the defendant to discover the substance of any oral statement of his which the prosecution intends to offer at trial, if the statement was given in response to interrogation by any person known by defendant to be a government agent.

Proposed subdivision (a)(2) provides that Rule 16 does not authorize the defendant to discover "reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case. . . ."

The proposed rule also enlarges the scope of the government's discovery of materials in the custody of the defendant. The government is entitled to a list of the names and addresses of the witnesses the defendant intends to call during his case-in-chief. Proposed subdivision (b)(2) protects the defendant from having to disclose "reports, memoranda, or other internal defense documents . . . made in connection with the investigation or defense of the case. . . ."

Subdivision (d)(1) of the proposed rule permits the court to deny, restrict, or defer discovery by either party, or to make such other order as is appropriate. Upon request, a party may make a showing that such an order is necessary. This showing shall be made to the judge alone if the party so requests. If the court enters an order after such a showing, it must seal the record of the showing and preserve it in the event there is an appeal.

B. Committee Action. The Committee agrees that the parties should, to the maximum possible extent, accomplish discovery themselves. The court should become involved only when it is necessary to resolve a dispute or to issue an order pursuant to subdivision (d).

Perhaps the most controversial amendments to this rule were those dealing with witness lists. Under present law, the government must turn over a witness list

only in capital cases. [Section 3432 of title 18 of the United States Code provides: A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.] The defendant never needs to turn over a list of his witnesses. The proposed rule requires both the government and the defendant to turn over witness lists in every case, capital or noncapital. Moreover, the lists must be furnished to the adversary party upon that party's request.

The proposed rule was sharply criticized by both prosecutors and defenders. The prosecutors feared that pretrial disclosure of prosecution witnesses would result in harm to witnesses. The defenders argued that a defendant cannot constitutionally be compelled to disclose his witnesses.

The Committee believes that it is desirable to promote greater pretrial discovery. As stated in the Advisory Committee Note,

> broader discovery by both the defense and the prosecution will contribute to the fair and efficient administration of criminal justice by aiding in informed plea negotiations, by minimizing the undesirable effect of surprise at trial, and by otherwise contributing to an accurate determination of the issue of guilt or innocence. . . .

The Committee, therefore, endorses the principle that witness lists are discoverable. However, the Committee has attempted to strike a balance between the narrow provisions of existing law and the broad provisions of the proposed rule.

The Committee rule makes the procedures defendant-triggered. If the defendant asks for and receives a list of prosecution witnesses, then the prosecution may request a list of defense witnesses. The witness lists need not be turned over until 3 days before trial. The court can modify the terms of discovery upon a sufficient showing. Thus, the court can require disclosure of the witness lists earlier than 3 days before trial, or can permit a party not to disclose the identity of a witness before trial.

The Committee provision promotes broader discovery and its attendant values—informed disposition of cases without trial, minimizing the undesirable effect of surprise, and helping insure that the issue of guilt or innocence is accurately determined. At the same time, it avoids the problems suggested by both the prosecutors and the defenders.

The major argument advanced by prosecutors is the risk of danger to their witnesses if their identities are disclosed prior to trial. The Committee recognizes that there may be a risk but believes that the risk is not as great as some fear that it is. Numerous states require the prosecutor to provide the defendant with a list of prosecution witnesses prior to trial. [These States include Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, Tennessee, and Utah. See Advisory Committee Note, House Document 93-292, at 60.] The evidence before the Committee indicates that these states have not experienced unusual problems of witness intimidation. [See the comments of the Standing Committee on Criminal Law and Procedure of the State Bar of California in Hearings II, at 302.]

Some federal jurisdictions have adopted an omnibus pretrial discovery procedure that calls upon the prosecutor to give the defendant its witness lists. One such jurisdiction is the Southern District of California. The evidence before the Committee indicates that there has been no unusual problems with witness intimidation in that district. Charles Sevilla, Chief Trial Attorney for the Federal Defenders of San Diego, Inc., which operates in the Southern District of California, testified as follows:

> The Government in one of its statements to this committee indicated that providing the defense with witness lists will cause coerced witness perjury. This does not happen. We receive Government witness lists as a matter of course in the Southern District, and it's a rare occasion when there is any overture by a defense witness or by a defendant to a Government witness. It simply doesn't happen except on the rarest of occasion. When the Government has that fear it can resort to the protective order. [Hearings II, at 42.]

Mr. Sevilla's observations are corroborated by the views of the U.S. Attorney for the Southern District of California:

> Concerning the modifications to Rule 16, we have followed these procedures informally in this district for a number of years. We were one of the districts selected for the pilot projects of the Omnibus Hearing in 1967 or 1968. We have found that the courts in our district will not require us to disclose names of proposed witnesses when in our judgment to do so would not be advisable. Otherwise we routinely provide defense counsel with full discovery, including names and addresses of witnesses. We have not had any untoward results by following this program, having in mind that the courts will, and have, excused us from discovery where the circumstances warrant. [Hearings I, at 109.]

Much of the prosecutorial criticism of requiring the prosecution to give a list of its witnesses to the defendant reflects an unwillingness to trust judges to exercise sound judgment in the public interest. Prosecutors have stated that they frequently will open their files to defendants in order to induce pleas. [See testimony of Richard L. Thornburgh, United States Attorney for the Western District of Pennsylvania, in Hearings I, at 150.]

Prosecutors are willing to determine on their own when they can do this without jeopardizing the safety of witnesses. There is no reason why a judicial officer cannot exercise the same discretion in the public interest.

The Committee is convinced that in the usual case there is no serious risk of danger to prosecution witnesses from pretrial disclosure of their identities. In exceptional instances, there may be a risk of danger. The Committee rule, however, is capable of dealing with those exceptional instances while still providing for disclosure of witnesses in the usual case.

The Committee recognizes the force of the constitutional arguments advanced by defenders. Requiring a defendant, upon request, to give to the prosecution material which may be incriminating, certainly raises very serious constitutional problems. The Committee deals with these problems by having the defendant trigger the discovery procedures. Since the defendant has no constitutional right to discover any of the prosecution's evidence (unless it is exculpatory within the meaning of *Brady* v. *Maryland*, 373 U.S. 83 (1963)), it is permissible to condition his access to nonexculpatory evidence upon his turning over a list of defense witnesses. Rule 16 currently operates in this manner.

The Committee also changed subdivisions (a)(2) and (b)(2), which set forth "work product" exceptions to the general discovery requirements. The subsections proposed by the Supreme Court are cast in terms of the type of document involved (e. g., report), rather than in terms of the content (e. g., legal theory). The Committee recast these provisions by adopting language from Rule 26(b)(3) of the Federal Rules of Civil Procedure.

The Committee notes that subdivision (a)(1)(C) permits the defendant to discover certain items that "were obtained from or belong to the defendant." The Committee believes that, as indicated in the Advisory Committee Note [House Document 93-292, at 59], items that "were obtained from or belong to the defendant" are items that are material to the preparation of his defense.

The Committee added language to subdivision (a)(1)(B) to conform it to provisions in subdivision (a)(1)(A). The rule as changed by the Committee re-

quires the prosecutor to give the defendant such copy of the defendant's prior criminal record as is within the prosecutor's "possession, custody, or control, the existence of which is known, or by the exercise of due diligence may become known" to the prosecutor. The Committee also made a similar conforming change in subdivision (a)(1)(E), dealing with the criminal records of government witnesses. The prosecutor can ordinarily discharge his obligation under these two subdivisions, (a)(1)(B) and (E), by obtaining a copy of the F.B.I. "rap sheet."

The Committee made an additional change in subdivision (a)(1)(E). The proposed rule required the prosecutor to provide the defendant with a record of the felony convictions of government witnesses. The major purpose for letting the defendant discover information about the record of government witnesses, is to provide him with information concerning the credibility of those witnesses. Rule 609(a) of the Federal Rules of Evidence permits a party to attack the credibility of a witness with convictions other than just felony convictions. The Committee, therefore, changed subdivision (a)(1)(E) to require the prosecutor to turn over a record of all criminal convictions, not just felony convictions.

The Committee changed subdivision (d)(1), which deals with protective orders. Proposed (d)(1) required the court to conduct an ex parte proceeding whenever a party so requested. The Committee changed the mandatory language to permissive language. A Court may, not must, conduct an ex parte proceeding if a party so requests. Thus, if a party requests a protective or modifying order and asks to make its showing ex parte, the court has two separate determinations to make. First, it must determine whether an ex parte proceeding is appropriate, bearing in mind that ex parte proceedings are disfavored and not to be encouraged. [An ex parte proceeding would seem to be appropriate if any adversary proceeding would defeat the purpose of the protective or modifying order. For example, the identity of a witness would be disclosed and the purpose of the protective order is to conceal that witness' identity.] Second, it must determine whether a protective or modifying order shall issue.

CONFERENCE COMMITTEE NOTES, HOUSE REPORT NO. 94-414

Rule 16 deals with pretrial discovery by the defendant and the government. The House and Senate versions of the bill differ on Rule 16 in several respects.

A. Reciprocal vs. Independent Discovery for the Government.—The House version of the bill provides that the government's discovery is reciprocal. If the defendant requires and receives certain items from the government, then the government is entitled to get similar items from the defendant. The Senate version of the bill gives the government an independent right to discover material in the possession of the defendant.

The Conference adopts the House provisions.

B. Rule 16(a)(1)(A).—The House version permits an organization to discover relevant recorded grand jury testimony of any witness who was, at the time of the acts charged or of the grand jury proceedings, so situated as an officer or employee as to have been able legally to bind it in respect to the activities involved in the charges. The Senate version limits discovery of this material to testimony of a witness who was, at the time of the grand jury proceeding, so situated as an officer or employee as to have been legally to bind the defendant in respect to the activities involved in the charges.

The Conferees share a concern that during investigations, ex-employees and ex-officers of potential corporate defendants are a critical source of information regarding activities of their former corporate employers. It is not unusual that, at the time of their testimony or interview, these persons may have interests which are substantially adverse to or divergent from the putative corporate defendant. It is also not unusual that such individuals, though no longer sharing a community of interest with the corporation, may nevertheless be subject to pressure from their former employers. Such pressure may derive from the fact that the ex-employees or ex-officers have remained in the same industry or related industry, are employed by competitors, suppliers, or customers of their former employers, or have pension or other deferred compensation arrangements with former employers.

The Conferees also recognize that considerations of fairness require that a defendant corporation or other legal entity be entitled to the grand jury testimony of a former officer or employee if that person was personally involved in the conduct constituting the offense and was able legally to bind the defendant in respect to the conduct in which he was involved.

The Conferees decided that, on balance, a defendant organization should not be entitled to the relevant grand jury testimony of a former officer or employee in every instance. However, a defendant organization should be entitled to it if the former officer or employee was personally involved in the alleged conduct constituting the offense and was so situated as to have been able legally to bind the defendant in respect to the alleged conduct. The Conferees note that, even in those situations where the rule provides for disclosure of the testimony, the Government may, upon a sufficient showing, obtain a protective or modifying order pursuant to Rule 16(d)(1).

The Conference adopts a provision that permits a defendant organization to discover relevant grant jury testimony of a witness who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

C. Rules 16(a)(1)(E) and (b)(1)(C) (witness lists).—The House version of the bill provides that each party, the government and the defendant, may discover the names and addresses of the other party's witnesses 3 days before trial. The Senate version of the bill eliminates these provisions, thereby making the names and addresses of a party's witnesses nondiscoverable. The Senate version also makes a conforming change in Rule 16(d)(1). The Conference adopts the Senate version.

A majority of the Conferees believe it is not in the interest of the effective administration of criminal justice to require that the government or the defendant be forced to reveal the names and addresses of its witnesses before trial. Discouragement of witnesses and improper contact directed at influencing their testimony, were deemed paramount concerns in the formulation of this policy.

D. Rules 16(a)(2) and (b)(2).—Rules 16(a)(2) and (b)(2) define certain types of materials ("work product") not to be discoverable. The House version defines work product to be "the mental impressions, conclusions, opinions, or legal theories of the attorney for the government or other government agents." This is parallel to the definition in the Federal Rules of Civil Procedure. The Senate version returns to the Supreme Court's language and defines work product to be "reports, memoranda, or other internal government documents." This is the language of the present rule.

The Conference adopts the Senate provision.

The Conferees note that a party may not avoid a legitimate discovery request merely because something is labelled "report", "memorandum", or "internal document". For example if a document qualifies as a statement of the defendant within the meaning of the Rule 16(a)(1)(A), then the labelling of that document as "report", "memorandum", or "internal government document" will not shield that statement from discovery. Likewise, if the results of an experiment qualify as the results of a scientific test within the meaning of Rule 16(b)(1)(B), then the results of that experiment are not shielded from discovery even if they are la-

belled "report", "memorandum", or "internal defense document".

1975 AMENDMENT

Subd. (a)(4). Pub. L. 94-149 deleted par. (4) reading "Failure to Call Witness. The fact that a witness' name is on a list furnished under this rule shall not be grounds for comment upon a failure to call the witness."

Subd. (b)(3). Pub. L. 94-149 deleted par. (3) reading "Failure to Call Witness. The fact that a witness' name is on a list furnished under this rule shall not be grounds for a comment upon a failure to call a witness."

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Demands for production of statements and reports of witnesses, see section 3500 of this title.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Subpoena to produce books, papers or other documents, see rule 17.

FEDERAL RULES OF CIVIL PROCEDURE

Motion for order to inspect, copy or photograph, see rule 34, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 17. Subpoena

(a) For Attendance of Witnesses; Form; Issuance

A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United States magistrate in a proceeding before him, but it need not be under the seal of the court.

(b) Defendants Unable to Pay

The court shall order at any time that a subpoena be issued for service on a named witness upon an *ex parte* application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) For Production of Documentary Evidence and of Objects

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service

A subpoena may be served by the marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.

(e) Place of Service

(1) *In United States.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.

(2) *Abroad.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C., § 1783.

(f) For Taking Deposition; Place of Examination

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein.

(2) *Place.* The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) Contempt

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(29), 89 Stat. 375.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially the same as Rule 45(a) of the Federal Rules of Civil Procedure, 28 U.S.C. Appendix.

Note to Subdivision (b)

This rule preserves the existing right of an indigent defendant to secure attendance of witnesses at the expense of the Government, 28 U.S.C. former § 656 (Witnesses for indigent defendants). Under existing law, however, the right is limited to witnesses who are within the district in which the court is held or within one hundred miles of the place of trial. No procedure now exists whereby an indigent defendant can procure at Government expense the attendance of witnesses found in another district and more than 100 miles of the place of trial. This limitation is abrogated by the rule so that an indigent defendant will be able to

secure the attendance of witnesses at the expense of the Government no matter where they are located. The showing required by the rule to justify such relief is the same as that now exacted by 28 U.S.C. former § 656.

Note to Subdivision (c)

This rule is substantially the same as Rule 45(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (d)

This rule is substantially the same as Rule 45(c) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. The provision permitting persons other than the marshal to serve the subpoena, and requiring the payment of witness fees in Government cases is new matter.

Note to Subdivision (e)

(1) This rule continues existing law, 28 U.S.C. § 654 (Witnesses; subpoenas; may run into another district). The rule is different in civil cases in that in such cases, unless a statute otherwise provides, a subpoena may be served only within the district or within 100 miles of the place of trial, 28 U.S.C. former § 654; Rule 45(e)(1) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

(2) This rule is substantially the same as Rule 45(e)(2) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. See *Blackmer* v. *United States*, 284 U.S. 421, upholding the validity of the statute referred to in the rule.

Note to Subdivision (f)

This rule is substantially the same as Rule 45(d) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (g)

This rule is substantially the same as Rule 45(f) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

1948 AMENDMENT

The amendment is to substitute proper reference to Title 28 in place of the repealed act.

1966 AMENDMENT

Subdivision (b).—Criticism has been directed at the requirement that an indigent defendant disclose in advance the theory of his defense in order to obtain the issuance of a subpoena at government expense while the government and defendants able to pay may have subpoenas issued in blank without any disclosure. See Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice (1963) p. 27. The Attorney General's Committee also urged that the standard of financial inability to pay be substituted for that of indigency. Id. at 40–41. In one case it was held that the affidavit filed by an indigent defendant under this subdivision could be used by the government at his trial for purposes of impeachment. *Smith* v. *United States*, 312 F. 2d 867 (D.C. Cir. 1962). There has also been doubt as to whether the defendant need make a showing beyond the face of his affidavit in order to secure issuance of a subpoena. *Greenwell* v. *United States*, 317 F. 2d 108 (D.C. Cir. 1963).

The amendment makes several changes. The references to a judge are deleted since applications should be made to the court. An ex parte application followed by a satisfactory showing is substituted for the requirement of a request or motion supported by affidavit. The court is required to order the issuance of a subpoena upon finding that the defendant is unable to pay the witness fees and that the presence of the witness is necessary to an adequate defense.

Subdivision (d).—The subdivision is revised to bring it into conformity with 28 U.S.C. § 1825.

1972 AMENDMENT

Subdivisions (a) and (g) are amended to reflect the existence of the "United States magistrate," a phrase defined in rule 54.

1974 AMENDMENT

Subdivision (f)(2) is amended to provide that the court has discretion over the place at which the deposition is to be taken. Similar authority is conferred by Civil Rule 45(d)(2). See C. Wright, Federal Practice and Procedure: Criminal § 278 (1969).

Ordinarily the deposition should be taken at the place most convenient for the witness but, under certain circumstances, the parties may prefer to arrange for the presence of the witness at a place more convenient to counsel.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 17 of the Federal Rules of Criminal Procedure deals with subpoenas. Subdivision (f)(2) as proposed by the Supreme Court provides:

> The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court.

B. Committee Action. The Committee added language to the proposed amendment that directs the court to consider the convenience of the witness and the parties when compelling a witness to attend where a deposition will be taken.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94–64, effective Dec. 1, 1975, see section 2 of Pub. L. 94–64, set out as a note under rule 4 of these rules.

SUPERSEDURE

Provision of subd. (d) of this rule that witness shall be tendered the fee for 1 day's attendance and mileage allowed by law as superseded by section 1825 of Title 28, Judiciary and Judicial Procedure, see such section and Reviser's Note thereunder.

CROSS REFERENCES

Demands for production of statements and reports of witnesses, see section 3500 of this title.

Deposition of witnesses, see rule 15.

Forms of subpoenas to testify and to produce document or object, see forms 20 and 21.

Marshal's fee for service of subpoena, see section 1921 of Title 28, Judiciary and Judicial Procedure.

Per diem and mileage of witnesses generally, see section 1821 of Title 28, Judiciary and Judicial Procedure.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 17.1. Pretrial Conference

At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admis-

sions are reduced to writing and signed by the defendant and his attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

(Added Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This new rule establishes a basis for pretrial conferences with counsel for the parties in criminal cases within the discretion of the court. Pretrial conferences are now being utilized to some extent even in the absence of a rule. See, generally, Brewster, Criminal Pre-Trials—Useful Techniques, 29 F.R.D. 442 (1962); Estes, Pre-Trial Conferences in Criminal Cases, 23 F.R.D. 560 (1959); Kaufman, Pre-Trial in Criminal Cases, 23 F.R.D. 551 (1959); Kaufman, Pre-Trial in Criminal Cases, 42 J. Am. Jud. Soc. 150 (1959); Kaufman, The Appalachian Trial: Further Observations on Pre-Trial in Criminal Cases, 44 J. Am. Jud. Soc. 53 (1960); West, Criminal Pre-Trials—Useful Techniques, 29 F.R.D. 436 (1962); Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 F.R.D. 399–403, 468–470 (1960). Cf. Mo. Sup. Ct. Rule 25.09; Rules Governing the N.J. Courts, § 3:5–3.

The rule is cast in broad language so as to accommodate all types of pretrial conferences. As the third sentence suggests, in some cases it may be desirable or necessary to have the defendant present. See Committee on Pretrial Procedure of the Judicial Conference of the United States, Recommended Procedures in Criminal Pretrials, 37 F.R.D. 95 (1965).

V. VENUE

Rule 18. Place of Prosecution and Trial

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. The Constitution of the United States, Article III. Section 2, Paragraph 3, provides:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law • • •

28 U.S.C. former § 114 (now §§ 1393, 1441) provides:

All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district.

The word "prosecutions," as used in this statute, does not include the finding and return of an indictment. The prevailing practice of impaneling a grand jury for the entire district at a session in some division and of distributing the indictments among the divisions in which the offenses were committed is deemed proper and legal, *Salinger* v. *Loisel*, 265 U.S. 224, 237, 44 S. Ct. 519, 68 L. Ed. 989. The court stated that this practice is "attended with real advantages." The rule is a restatement of existing law and is intended to sanction the continuance of this practice. For this reason, the rule requires that only the trial be held in the division in which the offense was committed and permits other proceedings to be had elsewhere in the same district.

2. Within the framework of the foregoing constitutional provisions and the provisions of the general statute, 28 U.S.C. former § 114 (now §§ 1393, 1441), supra, numerous statutes have been enacted to regulate the venue of criminal proceedings, particularly in respect to continuing offenses and offenses consisting of several transactions occurring in different districts. *Armour Packing Co.* v. *United States*, 209 U.S. 56, 73–77, 28 S. Ct. 428, 52 L. Ed. 681; *United States* v. *Johnson*, 323 U.S. 273, 65 S. Ct. 249, 89 L. Ed. 236. These special venue provisions are not affected by the rule. Among these statutes are the following:

U.S.C. Title 8 former:

§ 138 [now §§ 1326, 1328, 1329] (Importation of aliens for immoral purposes; attempt to reenter after deportation; penalty)

U.S.C. Title 15:

§ 78aa (Regulation of Securities Exchanges; jurisdiction of offenses and suits)

§ 79y (Control of Public Utility Holding Companies; jurisdiction of offenses and suits)

§ 80a–43 (Investment Companies; jurisdiction of offenses and suits)

§ 80b–14 (Investment Advisers; jurisdiction of offenses and suits)

§ 298 (Falsely Stamped Gold or Silver, etc., violations of law; penalty; jurisdiction of prosecutions)

§ 715i (Interstate Transportation of Petroleum Products; restraining violations; civil and criminal proceedings; jurisdiction of District Courts; review)

§ 717u (Natural Gas Act; jurisdiction of offenses; enforcement of liabilities and duties)

U.S.C. Title 18 former:

§ 39 [now §§ 5, 3241] (Enforcement of neutrality; United States defined; jurisdiction of offenses; prior offenses; partial invalidity of provisions)

§ 336 [now § 1302] (Lottery, or gift enterprise circulars not mailable; place of trial)

§ 338a [now §§ 876, 3239] (Mailing threatening communications)

§ 338b [now §§ 877, 3239] (Same; mailing in foreign country for delivery in the United States)

§ 345 [now § 1717] (Using or attempting to use mails for transmission of matter declared nonmailable by title; jurisdiction of offense)

§ 396e [now § 1762] (Transportation or importation of convict-made goods with intent to use in violation of local law; jurisdiction of violations)

§ 401 [now § 2421] (White slave traffic; jurisdiction of prosecutions)

§ 408 [now §§ 10, 2311 to 2313] (Motor vehicles; transportation, etc., of stolen vehicles)

§ 408d [now §§ 875, 3239] (Threatening communications in interstate commerce)

§ 408e [now § 1073] (Moving in interstate or foreign commerce to avoid prosecution for felony or giving testimony)

§ 409 [now §§ 659, 660, 2117] (Larceny, etc., of goods in interstate or foreign commerce; penalty)

§ 412 [now § 660] (Embezzlement, etc., by officers of carrier; jurisdiction; double jeopardy)

§ 418 [now § 3237] (National Stolen Property Act; jurisdiction)

§ 419d [now § 3237] (Transportation of stolen cattle in interstate or foreign commerce; jurisdiction of offense)

§ 420d [now § 1951] (Interference with trade and commerce by violence, threats, etc., jurisdiction of offenses)

§ 494 [now § 1654] (Arming vessel to cruise against citizen; trials)

§ 553 [now § 3236] (Place of committal of murder or manslaughter determined)

U.S.C. Title 21:

§ 17 (Introduction into, or sale in, State or Territory or District of Columbia of dairy or food products falsely labeled or branded; penalty; jurisdiction of prosecutions)

§ 118 (Prevention of introduction and spread of contagion; duty of district attorneys)

U.S.C. Title 28 former:

§ 101 [now 18 U.S.C. § 3235] (Capital cases)

§ 102 [now 18 U.S.C. § 3238] (Offenses on the high seas)

§ 103 [now 18 U.S.C. § 3237] (Offenses begun in one district and completed in another)

§ 121 [now 18 U.S.C. § 3240] (Creation of new district or division)

U.S.C. Title 47:

§ 33 (Submarine Cables; jurisdiction and venue of actions and offenses)

§ 505 (Special Provisions Relating to Radio; venue of trials)

U.S.C. Title 49:

§ 41 (Legislation Supplementary to Interstate Commerce Act; liability of corporation carriers and agents; offenses and penalties—(1) Liability of corporation common carriers; offenses; penalties; Jurisdiction)

§ 623 [now § 1473] (Civil Aeronautics Act; venue and prosecution of offenses)

1966 AMENDMENT

The amendment eliminates the requirement that the prosecution shall be in a division in which the offense was committed and vests discretion in the court to fix the place of trial at any place within the district with due regard to the convenience of the defendant and his witnesses.

The Sixth Amendment provides that the defendant shall have the right to a trial "by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. * * *" There is no constitutional right to trial within a division. See *United States* v. *Anderson*, 328 U.S. 699, 704, 705 (1946); *Barrett* v. *United States*, 169 U.S. 218 (1898); *Lafoon* v. *United States*, 250 F. 2d 958 (5th Cir. 1958); *Carrillo* v. *Squier*, 137 F. 2d 648 (9th Cir. 1943); *McNealey* v. *Johnston*, 100 F. 2d 280, 282 (9th Cir. 1938). Cf. *Platt* v. *Minnesota Mining and Manufacturing Co.*, 376 U.S. 240 (1964).

The former requirement for venue within the division operated in an irrational fashion. Divisions have been created in only half of the districts, and the differentiation between those districts with and those without divisions often bears no relationship to comparative size or population. In many districts a single judge is required to sit in several divisions and only brief and infrequent terms may be held in particular divisions. As a consequence under the original rule there was often undue delay in the disposition of criminal cases—delay which was particularly serious with respect to defendants who had been unable to secure release on bail pending the holding of the next term of court.

If the court is satisfied that there exists in the place fixed for trial prejudice against the defendant so great as to render the trial unfair, the court may, of course, fix another place of trial within the district (if there be such) where such prejudice does not exist. Cf. Rule 21 dealing with transfers between districts.

CROSS REFERENCES

Constitutional restrictions on venue of criminal prosecutions, see Const. Art. III, sec. 2, cl. 3 and Amend. VI.

Divisions within judicial district, see sections 81 et seq. of Title 28, Judiciary and Judicial Procedure.

Judicial districts within State, see sections 81 et seq. of Title 28.

Transfer from district—

For plea and sentence, see rule 20.

Or division for trial, see rule 21.

Venue—

Capital cases, see section 3235 of this title.

Creation of new district or division, see section 3240 of this title.

Murder or manslaughter, see section 3236 of this title.

Offenses begun in one district and completed in another, see section 3237 of this title.

Offenses not committed in any district, see section 3238 of this title.

Threatening communications, see section 3239 of this title.

Rule 19. Rescinded. Feb. 28, 1966, eff. July 1, 1966

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 19 is rescinded in view of the amendments being proposed to rule 18.

Rule 20. Transfer From the District for Plea and Sentence

(a) Indictment or Information Pending

A defendant arrested, held, or present in a district other than that in which an indictment or information is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending, and to consent to disposition of the case in the district in which he was arrested, held, or present, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant is arrested, held, or present, and the prosecution shall continue in that district.

(b) Indictment or Information Not Pending

A defendant arrested, held, or present in a district other than the district in which a complaint is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the warrant was issued, and to consent to disposition of the case in the district in which he was arrested, held, or present subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys and upon filing of an information or the return of an indictment, the clerk of the court for the district in which the warrant was issued shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant was arrested, held, or present, and the prosecution shall continue in that district. When the defendant is brought before the court to plead to an information filed in the district where the warrant was issued, he may at that time waive indictment as provided in Rule 7, and the prosecution may continue based upon the information originally filed.

(c) Effect of Not Guilty Plea

If after the proceeding has been transferred pursuant to subdivision (a) or (b) of this rule the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he wishes to plead guilty or nolo contendere shall not be used against him.

(d) Juveniles

A juvenile (as defined in 18 U.S.C. § 5031) who is arrested, held, or present in a district other than that in which he is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after he has been advised by counsel and with the approval of the court and the United States attorney for each district, consent to be proceeded against as a juvenile delinquent in the district in which he is arrested, held, or present. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his rights, including the right to be returned to the district in which he is alleged to have committed the act, and of the consequences of such consent.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(30), 89 Stat. 375.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule introduces a new procedure in the interest of defendants who intend to plead guilty and are arrested in a district other than that in which the prosecution has been instituted. This rule would accord to a defendant in such a situation an opportunity to secure a disposition of the case in the district where the arrest takes place, thereby relieving him of whatever hardship may be involved in a removal to the place where the prosecution is pending. In order to prevent possible interference with the administration of justice, however, the consent of the United States attorneys involved is required.

1966 AMENDMENT

Rule 20 has proved to be most useful. In some districts, however, literal compliance with the procedures spelled out by the rule has resulted in unnecessary delay in the disposition of cases. This delay has been particularly troublesome where the defendant has been arrested prior to the filing of an indictment or information against him. See e.g., the procedure described in *Donovan* v. *United States*, 205 F. 2d 557 (10th Cir. 1953). Furthermore, the benefit of the rule has not been available to juveniles electing to be proceeded against under 18 U.S.C. §§ 5031-5037. In an attempt to clarify and simplify the procedure the rule has been recast into four subdivisions.

Subdivision (a).—This subdivision is intended to apply to the situation in which an indictment or information is pending at the time at which the defendant indicates his desire to have the transfer made. Two amendments are made to the present language of the rule. In the first sentence the words "or held" and "or is held" are added to make it clear that a person already in state or federal custody within a district may request a transfer of federal charges pending against him in another district. See 4 Barron, Federal Practice and Procedure 146 (1951). The words "after receiving a copy of the indictment or information" are deleted.

The defendant should be permitted, if he wishes, to initiate transfer proceedings under the Rule without waiting for a copy of the indictment or information to be obtained. The defendant is protected against prejudice by the fact that under subdivision (c) he can, in effect, rescind his action by pleading not guilty after the transfer has been completed.

Subdivision (b).—This subdivision is intended to apply to the situation in which no indictment or information is pending but the defendant has been arrested on a warrant issued upon a complaint in another district. Under the procedure set out he may initiate the transfer proceedings without waiting for the filing of an indictment or information in the district where the complaint is pending. Also it is made clear that the defendant may validate an information previously filed by waiving indictment in open court when he is brought before the court to plead. See *United States* v. *East*, 5 F.R.D. 389. (N.D. Ind. 1946); *Potter* v. *United States*, 36 F.R.D. 394 (W.D. Mo. 1965). Here again the defendant is fully protected by the fact that at the time of pleading in the transferee court he may then refuse to waive indictment and rescind the transfer by pleading not guilty.

Subdivision (c).—The last two sentences of the original rule are included here. The last sentence is amended to forbid use against the defendant of his statement that he wishes to plead guilty or nolo contendere whether or not he was represented by counsel when it was made. Since under the amended rule the defendant may make his statement prior to receiving a copy of the indictment or information, it would be unfair to permit use of that statement against him.

Subdivision (d).—Under 18 U.S.C. § 5033 a juvenile who has committed an act in violation of the law of the United States in one district and is apprehended in another must be returned to the district "having cognizance of the alleged violation" before he can consent to being proceeded against as a juvenile delinquent. This subdivision will permit a juvenile after he has been advised by counsel and with the approval of the court and the United States attorney to consent to be proceeded against in the district in which he is arrested or held. Consent is required only of the United States attorney in the district of the arrest in order to permit expeditious handling of juvenile cases. If it is necessary to recognize special interests of particular districts where offenses are committed—e.g., the District of Columbia with its separate Juvenile Court (District of Columbia Code § 11-1551(a))—the Attorney General may do so through his Administrative control over United States Attorneys.

Subdivision (e).—This subdivision is added to make it clear that a defendant who appears in one district in response to a summons issued in the district where the offense was committed may initiate transfer proceedings under the rule.

1974 AMENDMENT

Rule 20 is amended to provide that a person "present" in a district other than the district in which he is charged with a criminal offense may, subject to the other provisions of rule 20, plead guilty in the district in which he is "present." See rule 6(b), Rules of Procedure for the Trial of Minor Offenses Before Magistrates.

Under the former rule, practice was to have the district in which the offense occurred issue a bench warrant authorizing the arrest of the defendant in the district in which he was located. This is a procedural complication which serves no interest of either the government or the defense and therefore can properly be dispensed with.

Making the fact that a defendant is "present" in the district an adequate basis for allowing him to plead guilty there makes it unnecessary to retain subdivision (e) which makes appearance in response to a summons equivalent to an arrest. Dropping (e) will eliminate some minor ambiguity created by that subdivision. See C. Wright, Federal Practice and Procedure: Criminal § 322 n. 26, p. 612 (1969, Supp. 1971).

There are practical advantages which will follow from the change. In practice a person may turn himself in in a district other than that in which the prosecution is pending. It may be more convenient to have him plead in the district in which he is present rather

than having him or the government incur the expense of his return to the district in which the charge is pending.

The danger of "forum shopping" can be controlled by the requirement that both United States Attorneys agree to the handling of the case under provisions of this rule.

NOTES OF COMMITTEE ON THE JUDICIARY HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 20 of the Federal Rules of Criminal Procedure deals with transferring a defendant from one district to another for the purpose of pleading and being sentenced. It deals with the situation where a defendant is located in one district (A) and is charged with a crime in another district (B). Under the present rule, if such a defendant desires to waive trial and plead guilty or nolo contendere, a judge in district B would issue a bench warrant for the defendant, authorizing his arrest in district A and his transport to district B for the purpose of pleading and being sentenced.

The Supreme Court amendments permit the defendant in the above example to plead guilty or nolo contendere in district A, if the United States Attorneys for districts A and B consent.

B. Committee Action. The Committee has added a conforming amendment to subdivision (d), which establishes procedures for dealing with defendants who are juveniles.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Time of motion to transfer, see rule 22.

Transfer from the district or division for trial, see rule 21.

Rule 21. Transfer From the District for Trial

(a) For Prejudice in the District

The court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district.

(b) Transfer in Other Cases

For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to him or any one or more of the counts thereof to another district.

(c) Proceedings on Transfer

When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivisions (a) and (b)

1. This rule introduces an addition to existing law. "Lawyers not thoroughly familiar with Federal practice are somewhat astounded to learn that they may not move for a change of venue, even if they are able to demonstrate that public feeling in the vicinity of the crime may render impossible a fair and impartial trial. This seems to be a defect in the federal law, which the proposed rules would cure." Homer Cummings, 29 A.B.A. Jour. 655; Medalie, 4 Lawyers Guild R. (3)1, 5.

2. The rule provides for two kinds of motions that may be made by the defendant for a change of venue. The first is a motion on the ground that so great a prejudice exists against the defendant that he cannot obtain a fair and impartial trial in the district or division where the case is pending. Express provisions to a similar effect are found in many State statutes. See, e. g., Ala. Code (1940), Title 15, sec. 267; Cal. Pen. Code (Deering, 1941), sec. 1033; Conn. Gen. Stat. (1930), sec. 6445; Mass. Gen. Laws (1932) c. 277, sec. 51 (in capital cases); N.Y. Code of Criminal Procedure, sec. 344. The second is a motion for a change of venue in cases involving an offense alleged to have been committed in more than one district or division. In such cases the court, on defendant's motion, will be authorized to transfer the case to another district or division in which the commission of the offense is charged, if the court is satisfied that it is in the interest of justice to do so. The effect of this provision would be to modify the existing practice under which in such cases the Government has the final choice of the jurisdiction where the prosecution should be conducted. The matter will now be left in the discretion of the court.

3. The rule provides for a change of venue only on defendant's motion and does not extend the same right to the prosecution, since the defendant has a constitutional right to a trial in the district where the offense was committed. Constitution of the United States, Article III, Sec. 2, Par. 3; Amendment VI. By making a motion for a change of venue, however, the defendant waives this constitutional right.

4. This rule is in addition to and does not supersede existing statutes enabling a party to secure a change of judge on the ground of personal bias or prejudice, 28 U.S.C. former § 25 (now § 144); or enabling the defendant to secure a change of venue as of right in certain cases involving offenses committed in more than one district, 18 U.S.C. former § 338a(d) (now §§ 876, 3239) (Mailing threatening communications); Id. 18 U.S.C. § 403d(d) (now §§ 875, 3239) (Threatening communications in interstate commerce).

Note to Subdivision (c)

Cf. 28 U.S.C. former § 114 (now §§ 1393, 1441) and Rule 20, supra.

1966 AMENDMENT

Subdivision (a).—All references to divisions are eliminated in accordance with the amendment to Rule 18 eliminating division venue. The defendant is given the right to a transfer only when he can show that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in the district. Transfers within the district to avoid prejudice will be within the power of the judge to fix the place of trial as provided in the amendments to Rule 18. It is also made clear that on a motion to transfer under this subdivision the court may select the district to which the transfer may be made. Cf. *United States* v. *Parr*, 17 F.R.D. 512, 519 (S.D. Tex. (1955); *Parr* v. *United States*, 351 U.S. 513 (1956).

Subdivision (b).—The original rule limited change of venue for reasons other than prejudice in the district to those cases where venue existed in more than one district. Upon occasion, however, convenience of the parties and witnesses and the interest of justice would best be served by trial in a district in which no part of the offense was committed. See, e.g., *Travis* v. *United States*, 364 U.S. 631 (1961), holding that the only venue of a charge of making or filing a false non-Communist affidavit required by § 9(h) of the National Labor Relations Act is in Washington, D.C. even though all the relevant witnesses may be located at

the place where the affidavit was executed and mailed. See also Barber, Venue in Federal Criminal Cases: A Plea for Return to Principle, 42 Tex. L. Rev. 39 (1963); Wright, Proposed Changes in Federal Civil, Criminal and Appellate Procedure, 35 F.R.D. 317, 329 (1964). The amendment permits a transfer in any case on motion of the defendant on a showing that it would be for the convenience of parties and witnesses, and in the interest of justice. Cf. 28 U.S.C. § 1404(a), stating a similar standard for civil cases. See also *Platt* v. *Minnesota Min. & Mfg. Co.*, 376 U.S.C. 240 (1964). Here, as in subdivision (a), the court may select the district to which the transfer is to be made. The amendment also makes it clear that the court may transfer all or part of the offenses charged in a multi-count indictment or information. Cf. *United States* v. *Choate*, 276 F.2d 724 (5th Cir. 1960). References to divisions are eliminated in accordance with the amendment to Rule 18.

Subdivision (c).—The reference to division is eliminated in accordance with the amendment to Rule 18.

CROSS REFERENCES

Bias or prejudice of judge, see section 144 of Title 28, Judiciary and Judicial Procedure.

Time of motion to transfer, see rule 22.

Rule 22. Time of Motion To Transfer

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

NOTES OF ADVISORY COMMITTEE ON RULES

Cf. Rule 12(b)(3).

CROSS REFERENCES

Time of motion raising defenses and objections before trial, see rule 12.

VI. TRIAL

Rule 23. Trial by Jury or by the Court

(a) Trial by Jury

Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

(b) Jury of Less Than Twelve

Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) Trial Without a Jury

In a case tried without a jury the court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. This rule is a formulation of the constitutional guaranty of trial by jury, Constitution of the United States, Article III, Sec. 2, Par. 3: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury * * *"; Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * *." The right to a jury trial, however, does not apply to petty offenses, *District of Columbia* v. *Clawans*, 300 U.S. 617, 57 S. Ct. 660, 81 L. Ed. 843; *Schick* v. *United States*, 195 U.S. 65, 24 S. Ct. 826, 49 L. Ed. 99, 1 Ann. Cas. 585; Frankfurter and Corcoran, 39 Harv. L. R. 917. Cf. Rule 38(a) of the Federal Rules of Civil Procedure.

2. The provision for a waiver of jury trial by the defendant embodies existing practice, the constitutionality of which has been upheld, *Patton* v. *United States*, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854, 70 A.L.R. 263; *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 63 S.Ct. 236, 87 L.Ed. 268, 143 A.L.R. 435; Cf. Rules 38 and 39 of Federal Rules of Civil Procedure, 28 U.S.C., Appendix. Many States by express statutory provision permit waiver of jury trial in criminal cases. See A.L.I. Code of Criminal Procedure Commentaries, pp. 807-811.

Note to Subdivision (b)

This rule would permit either a stipulation before the trial that the case be tried by a jury composed of less than 12 or a stipulation during the trial consenting that the case be submitted to less than 12 jurors. The second alternative is useful in case it becomes necessary during the trial to excuse a juror owing to illness or for some other cause and no alternate juror is available. The rule is a restatement of existing practice, the constitutionality of which was approved in *Patton* v. *United States*, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854, 70 A.L.R. 263.

Note to Subdivision (c)

This rule changes existing law in so far as it requires the court in a case tried without a jury to make special findings of fact if requested. Cf. Connecticut practice, under which a judge in a criminal case tried by the court without a jury makes findings of fact, *State* v. *Frost*, 105 Conn. 326, 135 A. 446.

1966 AMENDMENT

This amendment adds to the rule a provision added to Civil Rule 52(a) in 1946.

GUAM; NONREQUIREMENT FOR JURY TRIAL

Inapplicability of requirements for jury trial, to criminal prosecutions in the District Court of Guam, see section 1424 of Title 48, Territories and Insular Possessions.

TRIAL BY JURY IN VIRGIN ISLANDS

Trial by jury in the Virgin Islands, see section 1616 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Guaranty of trial by jury, see Const. Art. 3, sec. 2, cl. 3 and Amend. VI.

Trial by jury, see section 1861 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Juries of less than twelve, see rule 48, Title 28, Appendix, Judiciary and Judicial Procedure.

Jury trial of right, see rule 38.

Trial by court and advisory jury, see rule 39.

Rule 24. Trial Jurors

(a) Examination

The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) Peremptory Challenges

If the offense charged is punishable by death, each side is entitled to 20 peremptory chal-

lenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(c) Alternate Jurors

The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impaneled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is similar to Rule 47(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, and also embodies the practice now followed by many Federal courts in criminal cases. Uniform procedure in civil and criminal cases on this point seems desirable.

Note to Subdivision (b)

This rule embodies existing law, 28 U.S.C. former § 424 (now § 1870) (Challenges), with the following modifications. In capital cases the number of challenges is equalized as between the defendant and the United States so that both sides have 20 challenges, which only the defendant has at present. While continuing the existing rule that multiple defendants are deemed a single party for purposes of challenges, the rule vests in the court discretion to allow additional peremptory challenges to multiple defendants and to permit such challenges to be exercised separately or jointly. Experience with cases involving numerous defendants indicates the desirability of this modification.

Note to Subdivision (c)

This rule embodies existing law, 28 U.S.C. former § 417a (Alternate jurors), as well as the practice prescribed for civil cases by Rule 47(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, except that the number of possible alternate jurors that may be impaneled is increased from two to four, with a corresponding adjustment of challenges.

1966 AMENDMENT

Experience has demonstrated that four alternate jurors may not be enough for some lengthy criminal trials. See e.g., *United States* v. *Bentvena*, 288 F.2d 442 (2d Cir. 1961); Reports of the Proceedings of the Judicial Conference of the United States, 1961, p. 104. The amendment to the first sentence increases the number authorized from four to six. The fourth sentence is amended to provide an additional peremptory challenge where a fifth or sixth alternate juror is used.

The words "or are found to be" are added to the second sentence to make clear that an alternate juror may be called in the situation where it is first discovered during the trial that a juror was unable or disqualified to perform his duties at the time he was sworn. See *United States* v. *Goldberg*, 330 F.2d 30 (3rd Cir. 1964), cert. den. 377 U.S. 953 (1964).

CROSS REFERENCES

Challenges of jurors, see section 1870 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, see rule 47, Title 28, Appendix, Judiciary and Judicial Procedure.

Examination of jurors, see rule 47.

Rule 25. Judge; Disability

(a) During Trial

If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial.

(b) After Verdict or Finding of Guilt

If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is similar to Rule 63 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. See also, 28 U.S.C. former § 776 (Bill of exceptions; authentication; signing of by judge).

1966 AMENDMENT

In September, 1963, the Judicial Conference of the United States approved a recommendation of its Committee on Court Administration that provision be made for substitution of a judge who becomes disabled during trial. The problem has become serious because of the increase in the number of long criminal trials. See 1963 Annual Report of the Director of the Administrative Office of the United States Courts, p. 114, reporting a 25% increase in criminal trials lasting more than one week in fiscal year 1963 over 1962.

Subdivision (a).—The amendment casts the rule into two subdivisions and in subdivision (a) provides for substitution of a judge during a jury trial upon his certification that he has familiarized himself with the record of the trial. For similar provisions see Alaska Rules of Crim. Proc., Rule 25; California Penal Code, § 1053.

Subdivision (b).—The words "from the district" are deleted to permit the local judge to act in those situa-

tions where a judge who has been assigned from within the district to try the case is, at the time for sentence, etc., back at his regular place of holding court which may be several hundred miles from the place of trial. It is not intended, of course, that substitutions shall be made where the judge who tried the case is available within a reasonable distance from the place of trial.

FEDERAL RULES OF CIVIL PROCEDURE

Disability of judge, see rule 63, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 26. Taking of Testimony

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.

(As amended Nov. 20, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule contemplates the development of a uniform body of rules of evidence to be applicable in trials of criminal cases in the Federal courts. It is based on *Funk* v. *United States*, 290 U.S. 371, 54 S.Ct. 212, 78 L.Ed. 369, 93 A.L.R. 1136, and *Wolfle* v. *United States*, 291 U.S. 7, 54 S.Ct. 279, 78 L.Ed. 617, which indicated that in the absence of statute the Federal courts in criminal cases are not bound by the State law of evidence, but are guided by common law principles as interpreted by the Federal courts "in the light of reason and experience." The rule does not fetter the applicable law of evidence to that originally existing at common law. It is contemplated that the law may be modified and adjusted from time to time by judicial decisions. See Homer Cummings, 29 A.B.A. Jour. 655; Vanderbilt, 29 A.B.A. Jour. 377; Holtzoff, 12 George Washington L.R. 119, 131-132; Holtzoff, 3 F.R.D. 445, 453; Howard, 51 Yale L. Jour. 763; Medalie, 4 Lawyers Guild R. (3)1, 5-6.

2. This rule differs from the corresponding rule for civil cases (Federal Rules of Civil Procedure, Rule 43(a), 28 U.S.C., Appendix), in that this rule contemplates a uniform body of rules of evidence to govern in criminal trials in the Federal courts, while the rule for civil cases prescribes partial conformity to State law and, therefore, results in a divergence as between various districts. Since in civil actions in which Federal jurisdiction is based on diversity of citizenship, the State substantive law governs the rights of the parties, uniformity of rules of evidence among different districts does not appear necessary. On the other hand, since all Federal crimes are statutory and all criminal prosecutions in the Federal courts are based on acts of Congress, uniform rules of evidence appear desirable if not essential in criminal cases, as otherwise the same facts under differing rules of evidence may lead to a conviction in one district and to an acquittal in another.

3. This rule expressly continues existing statutes governing the admissibility of evidence and the competency and privileges of witnesses. Among such statutes are the following:

8 U.S.C. former:

§ 138 [now §§ 1326, 1328, 1329] (Importation of aliens for immoral purposes; attempt to reenter after deportation; penalty)

28 U.S.C. former:

§ 632 [now 18 U.S.C. § 3481] (Competency of witnesses governed by State laws; defendants in criminal cases)

§ 633 (Competency of witnesses governed by State laws; husband or wife of defendant in prosecution for bigamy)

§ 634 [now 18 U.S.C. § 3486] (Testimony of witnesses before Congress)

§ 638 [now § 1731] (Comparison of handwriting to determine genuineness)

§ 695 [now § 1732] (Admissibility)

§ 695a [now 18 U.S.C. § 3491] (Foreign documents)

46 U.S.C.

§ 193 (Bills of lading to be issued; contents)

1972 AMENDMENT

The first sentence is retained, with appropriate narrowing of the title, since its subject is not covered in the Rules of Evidence. The second sentence is deleted because the Rules of Evidence govern admissibility of evidence, competency of witnesses, and privilege. The language is broadened, however, to take account of the Rules of Evidence and any other rules adopted by the Supreme Court.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF AMENDMENT PROPOSED NOVEMBER 20, 1972

Amendment of this rule embraced by the order entered by the Supreme Court of the United States on November 20, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93-595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 3771 of this title.

CROSS REFERENCES

Depositions, objections to admissibility, see rule 15.
Expert witnesses, see rule 28.
Foreign documents, see sections 3491 to 3496 of this title.
Informing defendant he is not required to make statement and of use against him, see rules 5 and 40.
Mental competency of accused, determination of, see sections 4244 to 4247 of this title.
Motions—
New trial for newly discovered evidence, see rule 33.
Return of property unlawfully seized, see rule 41.
Suppression of evidence, see rule 41 and form 16.
Offer of evidence after refusal of motion for acquittal, see rule 29.
Official record, proof, see rule 27.
Shop book rule, records made in regular course of business, see sections 3491 and 3492 of this title.
Subpoenas, see rule 17 and form 21.
Witnesses—
Absence, use of depositions, see rule 15.
Accused, competency, see section 3481 of this title.
Congress, immunity, see section 3486 of this title.

Rule 26.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(Added Feb. 28, 1966, eff. July 1, 1966, and amended Nov. 20, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

The original Federal Rules of Criminal Procedure did not contain a provision explicitly regulating the determination of foreign law. The resolution of issues of foreign law, when relevant in federal criminal proceedings, falls within the general compass of Rule 26 which provides for application of "the [evidentiary] principles of the common law as they may be inter-

preted by the courts of the United States in the light of reason and experience." See Green, Preliminary Report on the Advisability and Feasibility of Developing Uniform Rules of Evidence for the United States District Courts 6-7, 17-18 (1962). Although traditional "commonlaw" methods for determining foreign-country law have proved inadequate, the courts have not developed more appropriate practices on the basis of this flexible rule. Cf. Green, op. cit. supra at 26-28. On the inadequacy of common-law procedures for determining foreign law, see, e.g., Nussbaum, Proving the Law of Foreign Countries, 3 Am. J. Comp. L. 60 (1954).

Problems of foreign law that must be resolved in accordance with the Federal Rules of Criminal Procedure are most likely to arise in places such as Washington, D.C., the Canal Zone, Guam, and the Virgin Islands, where the federal courts have general criminal jurisdiction. However, issues of foreign law may also arise in criminal proceedings commenced in other federal districts. For example, in an extradition proceeding, reasonable ground to believe that the person sought to be extradited is charged with, or was convicted of, a crime under the laws of the demanding state must generally be shown. See *Factor* v. *Laubenheimer*, 290 U.S. 276 (1933); *Fernandez* v. *Phillips*, 268 U.S. 311 (1925); Bishop International Law: Cases and Materials (2d ed. 1962). Further, foreign law may be invoked to justify non-compliance with a subpoena duces tecum, *Application of Chase Manhattan Bank*, 297 F. 2d 611 (2d Cir. 1962), and under certain circumstances, as a defense to prosecution. Cf. *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, (1909). The content of foreign law may also be relevant in proceedings arising under 18 U.S.C. §§ 1201, 2312-2317.

Rule 26.1 is substantially the same as Civil Rule 44.1. A full explanation of the merits and practicability of the rule appear in the Advisory Committee's Note to Civil Rule 44.1. It is necessary here to add only one comment to the explanations there made. The second sentence of the rule frees the court from the restraints of the ordinary rules of evidence in determining foreign law. This freedom, made necessary by the peculiar nature of the issue of foreign law, should not constitute an unconstitutional deprivation of the defendant's rights to confrontation of witnesses. The issue is essentially one of law rather than of fact. Furthermore, the cases have held that the Sixth Amendment does not serve as a rigid barrier against the development of reasonable and necessary exceptions to the hearsay rule. See *Kay* v. *United States*, 255 F. 2d 476, 480 (4th Cir. 1958), cert. den., 358 U.S. 825 (1958); *Matthews* v. *United States*, 217 F. 2d 409, 418 (5th Cir. 1954); *United States* v. *Leathers*, 135 F. 2d 507 (2d Cir. 1943); and cf., *Painter* v. *Texas*, 85 S. Ct. 1065 (1965); *Douglas* v. *Alabama*, 85 S. Ct. 1074 (1965).

1972 AMENDMENT

Since the purpose is to free the judge, in determining foreign law, from restrictive evidentiary rules, the reference is made to the Rules of Evidence generally.

EFFECTIVE DATE OF AMENDMENT PROPOSED NOVEMBER 20, 1972

Amendment of this rule embraced by the order entered by the Supreme Court of the United States on November 20, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93-595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 3771 of this title.

Rule 27. Proof of Official Record

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule incorporates by reference Rule 44 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, which provided a simple and uniform method of proving public records and entry or lack of entry therein. The rule does not supersede statutes regulating modes of proof in respect to specific official records. In such cases parties have the option of following the general rule or the pertinent statute. Among the many statutes are:

28 U.S.C. former:

§ 661 [now § 1733] (Copies of department or corporation records and papers; admissibility; seal)

§ 662 [now § 1733] (Same; in office of General Counsel of the Treasury)

§ 663 [now § 1733] (Instruments and papers of Comptroller of Currency; admissibility)

§ 664 [now § 1733] (Organization certificates of national banks; admissibility)

§ 665 [now § 1733] (Transcripts from books of Treasury in suits against delinquents; admissibility)

§ 666 [now § 1733] (Same; certificate by Secretary or Assistant Secretary)

§ 668 [now 18 U.S.C. § 3497] (Same; indictments for embezzlement of public moneys)

§ 669 (Copies of returns in returns office admissible)

§ 670 [now § 1743] (Admissibility of copies of statements of demands by Post Office Department)

§ 671 [now § 1733] (Admissibility of copies of post office records and statement of accounts)

§ 672 [See § 1733] (Admissibility of copies of records in General Land Office)

§ 673 [now § 1744] (Admissibility of copies of records, and so forth, of Patent Office)

§ 674 [now § 1745] (Copies of foreign letters patent as prima facie evidence)

§ 675 (Copies of specifications and drawings of patents admissible)

§ 676 [now § 1736] (Extracts from Journals of Congress admissible when injunction of secrecy removed)

§ 677 [now § 1740] (Copies of records in offices of United States consuls admissible)

§ 678 (Books and papers in certain district courts)

§ 679 (Records in clerks' offices, western district of North Carolina)

§ 680 (Records in clerks' offices of former district of California)

§ 681 [now § 1734] (Original records lost or destroyed; certified copy admissible)

§ 682 [now § 1734] (Same; when certified copy not obtainable)

§ 685 [now § 1735] (Same; certified copy of official papers)

§ 687 [now § 1738] (Authentication of legislative acts; proof of judicial proceedings of State)

§ 688 [now § 1739] (Proofs of records in offices not pertaining to courts)

§ 689 [now § 1742] (Copies of foreign records relating to land titles)

§§ 695a-695h [now 18 U.S.C. §§ 3491-3496; 22 U.S.C. § 1204; § 1741] (Foreign documents)

1 U.S.C. former:

§ 30 [now § 112] (Statutes at Large; contents; admissibility in evidence)

§ 30a [now § 113] ("Little and Brown's" edition of laws and treaties competent evidence of Acts of Congress)

§ 54 [now § 204] (Codes and Supplements as establishing prima facie the Laws of United States and District of Columbia, citation of Codes and Supplements)

§ 55 [now § 209] (Copies of Supplements to Code of Laws of United States and of District of Columbia Code and Supplements; conclusive evidence of original)

5 U.S.C. former:

§ 490 [now 28 U.S.C. § 1733] (Records of Department of Interior; authenticated copies as evidence)

8 U.S.C. former:

§ 717(b) [now §§ 1435, 1482] (Former citizens of United States excepted from certain requirements; citizenship lost by spouse's alienage or loss of United States citizenship, or by entering armed forces of foreign state or acquiring its nationality)

§ 727(g) [now § 1443] (Administration of naturalization laws; rules and regulations; instruction in citizenship; forms; oaths; depositions; documents in evidence; photographic studio)

15 U.S.C. former:

§ 127 [now § 1057(e)] (Trade-marks; copies of records as evidence)

U.S.C. Title 20:

§ 52 (Smithsonian Institution; evidence of title to site and buildings)

25 U.S.C.:

§ 6 (Bureau of Indian Affairs; seal; authenticated and certified documents; evidence)

31 U.S.C.:

§ 46 (Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence)

38 U.S.C. former:

§ 11g [now § 202] (Seal of Veterans' Administration; authentication of copies of records)

43 U.S.C.:

§ 57 (Authenticated copies or extracts from records as evidence)

§ 58 (Transcripts from records of Louisiana)

§ 59 (Official papers in office of surveyor general in California; papers; copies)

§ 83 (Transcripts of records as evidence)

44 U.S.C. former:

§ 300h [now §§ 397, 399] (National Archives; seal; reproduction of archives; fee; admissibility in evidence of reproductions)

§ 307 (Filing document as constructive notice; publication in Register as presumption of validity; judicial notice; citation)

47 U.S.C.:

§ 412 (Documents filed with Federal Communications Commission as public records; prima facie evidence; confidential records)

49 U.S.C.:

§ 16 (Orders of Commission and enforcement thereof; forfeitures—(13) copies of schedules, tariffs, contracts, etc., kept as public records; evidence)

CROSS REFERENCES

Commission to consular offices to authenticate foreign documents, see section 3492 of this title.

Foreign documents, see sections 3491 to 3496 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 28. Interpreters

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

The power of the court to call its own witnesses, though rarely invoked, is recognized in the Federal courts, *Young* v. *United States*, 107 F.2d 490, C.C.A. 5th; *Litsinger* v. *United States*, 44 F.2d 45, C.C.A. 7th. This rule provides a procedure whereby the court may, if it chooses, exercise this power in connection with expert witnesses. The rule is based, in part, on the Uniform Expert Testimony Act, drafted by the Commissioners on Uniform State Laws, Hand Book of the National Conference of Commissioners on Uniform State Laws (1937), 337; see, also, Wigmore—Evidence, 3d Ed., sec. 563; A.L.I. Code of Criminal Procedure, secs. 307-309; National Commission on Law of Observance and Enforcement—Report on Criminal Procedure, 37. Similar provisions are found in the statutes of a number of States: Wisconsin—Wis. Stat. (1941), sec. 357.12; Indiana—Ind. Stat. Ann. (Burns, 1933), sec. 9-1702; California—Cal. Pen. Code (Deering, 1941), sec. 1027.

1966 AMENDMENT

Subdivision (a).—The original rule is made a separate subdivision. The amendment permits the court to inform the witness of his duties in writing since it often constitutes an unnecessary inconvenience and expense to require the witness to appear in court for such purpose.

Subdivision (b).—This new subdivision authorizes the court to appoint and provide for the compensation of interpreters. General language is used to give discretion to the court to appoint interpreters in all appropriate situations. Interpreters may be needed to interpret the testimony of non-English speaking witnesses or to assist non-English speaking defendants in understanding the proceedings or in communicating with assigned counsel. Interpreters may also be needed where a witness or a defendant is deaf.

1972 AMENDMENT

Subdivision (a). This subdivision is stricken, since the subject of court-appointed expert witnesses is covered in Evidence Rule 706 in detail.

Subdivision (b). The provisions of subdivision (b) are retained. Although Evidence Rule 703 specifies the qualifications of interpreters and the form of oath to be administered to them, it does not cover their appointment or compensation.

EFFECTIVE DATE OF AMENDMENT PROPOSED NOVEMBER 20, 1972

Amendment of this rule embraced by the order entered by the Supreme Court of the United States on November 20, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93-595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 3771 of this title.

Rule 29. Motion for Judgment of Acquittal

(a) Motion Before Submission to Jury

Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of Decision on Motion

If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion After Discharge of Jury

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

1. The purpose of changing the name of a motion for a directed verdict to a motion for judgment of acquittal is to make the nomenclature accord with the realities. The change of nomenclature, however, does not modify the nature of the motion or enlarge the scope of matters that may be considered.

2. The second sentence is patterned on New York Code of Criminal Procedure, sec. 410.

3. The purpose of the third sentence is to remove the doubt existing in a few jurisdictions on the question whether the defendant is deemed to have rested his case if he moves for a directed verdict at the close of the prosecution's case. The purpose of the rule is expressly to preserve the right of the defendant to offer evidence in his own behalf, if such motion is denied. This is a restatement of the prevailing practice, and is also in accord with the practice prescribed for civil cases by Rule 50(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (b)

This rule is in substance similar to Rule 50(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, and permits the court to render judgment for the defendant notwithstanding a verdict of guilty. Some Federal courts have recognized and approved the use of a judgment non obstante veredicto for the defendant in a criminal case, *Ex parte United States*, 101 F.2d 870, C.C.A. 7th, affirmed by an equally divided court, *United States* v. *Stone*, 308 U.S. 519, 60 S.Ct. 177, 84 L.Ed. 441. The rule sanctions this practice.

1966 AMENDMENT

Subdivision (a).—A minor change has been made in the caption.

Subdivision (b).—The last three sentences are deleted with the matters formerly covered by them transferred to the new subdivision (c).

Subdivision (c).—The new subdivision makes several changes in the former procedure. A motion for judgment of acquittal may be made after discharge of the jury whether or not a motion was made before submission to the jury. No legitimate interest of the government is intended to be prejudiced by permitting the court to direct an acquittal on a post-verdict motion. The constitutional requirement of a jury trial in criminal cases is primarily a right accorded to the defendant. Cf. *Adams* v. *United States, ex rel. McCann*, 317 U.S. 269 (1942); *Singer* v. *United States*, 380 U.S. 24 (1965); Note, 65 Yale L.J. 1032 (1956).

The time in which the motion may be made has been changed to 7 days in accordance with the amendment to Rule 45(a) which by excluding Saturday from the days to be counted when the period of time is less than 7 days would make 7 days the normal time for a motion required to be made in 5 days. Also the court is authorized to extend the time as is provided for motions for new trial (Rule 33) and in arrest of judgment (Rule 34).

References in the original rule to the motion for a new trial as an alternate to the motion for judgment of acquittal and to the power of the court to order a new trial have been eliminated. Motions for new trial are adequately covered in Rule 33. Also the original wording is subject to the interpretation that a motion for judgment of acquittal gives the court power to order a new trial even though the defendant does not wish a new trial and has not asked for one.

Rule 29.1. Closing Argument

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

(Added Apr. 22, 1974, eff. Dec. 1, 1975.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is designed to control the order of closing argument. It reflects the Advisory Committee's view that it is desirable to have a uniform federal practice. The rule is drafted in the view that fair and effective administration of justice is best served if the defendant knows the arguments actually made by the prosecution in behalf of conviction before the defendant is faced with the decision whether to reply and what to reply.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court, Rule 29.1 is a new rule that was added to regulate closing arguments. It prescribes that the government shall make its closing argument and then the defendant shall make his. After the defendant has argued, the government is entitled to reply in rebuttal.

B. Committee Action. The Committee endorses and adopts this proposed rule in its entirety. The Committee believes that as the Advisory Committee Note has stated, fair and effective administration of justice is best served if the defendant knows the arguments actually made by the prosecution in behalf of conviction before the defendant is faced with the decision whether to reply and what to reply. Rule 29.1 does not specifically address itself to what happens if the prosecution waives its initial closing argument. The Committee is of the view that the prosecutor, when he waives his initial closing argument, also waives his rebuttal. [See the remarks of Senior United States Circuit Judge J. Edward Lumbard in Hearings II, at 207.]

EFFECTIVE DATE

This rule effective Dec. 1, 1975, see section 2 of Pub.L. 94-64, set out as a note under rule 4 of these rules.

Rule 30. Instructions

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any por-

tion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule corresponds to Rule 51 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, the second sentence alone being new. It seemed appropriate that on a point such as instructions to juries there should be no difference in procedure between civil and criminal cases.

1966 AMENDMENT

The amendment requires the court, on request of any party, to require the jury to withdraw in order to permit full argument of objections to instructions.

CROSS REFERENCES

Harmless error, and plain error, generally, see rule 52.

Rule 31. Verdict

(a) Return

The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Several Defendants

If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of Less Offense

The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of Jury

When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) Criminal Forfeiture

If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is a restatement of existing law and practice. It does not embody any regulation of sealed verdicts, it being contemplated that this matter would be governed by local practice in the various district courts. The rule does not affect the existing statutes relating to qualified verdicts in cases in which capital punishment may be imposed, 18 U.S.C. former § 408a (now § 1201) (Kidnapped persons); 18 U.S.C. former § 412a (now § 1992) (Wrecking trains); 18 U.S.C. former § 567 (now § 1111) (Verdicts; qualified verdicts).

Note to Subdivision (b)

This rule is a restatement of existing law, 18 U.S.C. former § 566 (Verdicts; several joint defendants).

Note to Subdivision (c)

This rule is a restatement of existing law, 18 U.S.C. former § 565 (Verdicts; less offense than charged).

Note to Subdivision (d)

This rule is a restatement of existing law and practice, *Mackett* v. *United States*, 90 F.2d 462, 465, C.C.A. 7th; *Bruce* v. *Chestnut Farms Chevy Chase Dairy*, 126 F.2d 224, App.D.C.

1972 AMENDMENT

Subdivision (e) is new. It is intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, § 1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, § 408(a)(2).

The assumption of the draft is that the amount of the interest or property subject to criminal forfeiture is an element of the offense to be alleged and proved. See Advisory Committee Note to rule 7(c)(2).

Although special verdict provisions are rare in criminal cases, they are not unknown. See *United States* v. *Spock*, 416 F. 2d 165 (1st Cir. 1969), especially footnote 41 where authorities are listed.

CROSS REFERENCES

Amendment of information before verdict, see rule 7.
Canal Zone, application of rules governing proceedings after verdict of guilty, see rule 54.
Criminal contempt, verdict of guilty, see rule 42.
Directed verdict, motion for abolished, see rule 29.
Disability of judge after verdict, see rule 25.
Judgment, setting forth verdict, see rule 32.
Judgment of acquittal, before or after verdict, see rule 29.
Jurors, stipulation for number less than twelve before verdict, see rule 23.
New trial—
No verdict returned, see rule 29.
Time for motion, see rule 33.
Objections to instructions, before retirement of jury to consider verdict, see rule 30.
Presence of defendant, return of verdict, see rule 43.
Rules of Procedure—
After verdict, power of Supreme Court to prescribe, see section 3772 of this title.
Setting aside verdict of guilty, new trial or entry of judgment of acquittal, see rule 29.
To and including verdict, power of Supreme Court to prescribe, see section 3771 of this title.

VII. JUDGMENT

Rule 32. Sentence and Judgment

(a) Sentence

(1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) *Notification of Right to Appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and

of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment

(1) *In general.* A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) *Criminal forfeiture.* When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation

(1) *When Made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) *Disclosure*

(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Youth Correction Division of the Board of Parole pursuant to 18 U.S.C. §§ 4208(b), 4252, 5010(e), or 5034 shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) Withdrawal of Plea of Guilty

A motion to withdraw a plea of guilty or of *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) Probation

After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(f) Revocation of Probation

The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(31)-(34), 89 Stat. 376.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially a restatement of existing procedure. Rule I of the Criminal Appeals Rules of 1933, 292 U.S. 661 [18 U.S.C. formerly following § 688]. See Rule 43 relating to the presence of the defendant.

Note to Subdivision (b)

This rule is substantially a restatement of existing procedure. Rule I of the Criminal Appeals Rules of 1933, 292 U.S. 661 [18 U.S.C. formerly following § 688].

Note to Subdivision (c)

The purpose of this provision is to encourage and broaden the use of presentence investigations, which are now being utilized to good advantage in many cases. See, "The Presentence Investigation" published

by Administrative Office of the United States Courts, Division of Probation.

Note to Subdivision (d)

This rule modifies existing practice by abrogating the ten-day limitation on a motion for leave to withdraw a plea of guilty. See Rule II (4) of the Criminal Appeals Rules of 1933, 292 U.S. 661 [18 U.S.C. formerly following § 688].

Note to Subdivision (e)

See 18 U.S.C. former § 724 et seq. (now § 3651 et seq.).

1966 AMENDMENT

Subdivision (a)(1).—The amendment writes into the rule the holding of the Supreme Court that the court before imposing sentence must afford an opportunity to the defendant personally to speak in his own behalf. See *Green* v. *United States*, 365 U.S. 301 (1961); *Hill* v. *United States*, 368 U.S. 424 (1962). The amendment also provides an opportunity for counsel to speak on behalf of the defendant.

Subdivision (a)(2).—This amendment is a substantial revision and a relocation of the provision originally found in Rule 37(a)(2): "When a court after trial imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant." The court is required to advise the defendant of his right to appeal in all cases which have gone to trial after plea of not guilty because situations arise in which a defendant represented by counsel at the trial is not adequately advised by such counsel of his right to appeal. Trial counsel may not regard his responsibility as extending beyond the time of imposition of sentence. The defendant may be removed from the courtroom immediately upon sentence and held in custody under circumstances which make it difficult for counsel to advise him. See, e.g., *Hodges* v. *United States*, 368 U.S. 139 (1961). Because indigent defendants are most likely to be without effective assistance of counsel at this point in the proceedings, it is also provided that defendants be notified of the right of a person without funds to apply for leave to appeal in forma pauperis. The provision is added here because this rule seems the most appropriate place to set forth a procedure to be followed by the court at the time of sentencing.

Subdivision (c)(2).—It is not a denial of due process of law for a court in sentencing to rely on a report of a presentence investigation without disclosing such report to the defendant or giving him an opportunity to rebut it. *Williams* v. *New York*, 337 U.S. 241 (1949); *Williams* v. *Oklahoma*, 358 U.S. 576 (1959). However, the question whether as a matter of policy the defendant should be accorded some opportunity to see and refute allegations made in such reports has been the subject of heated controversy. For arguments favoring disclosure, see Tappan. Crime, Justice, and Correction, 558 (1960); Model Penal Code, 54-55 (Tent. Draft No. 2, 1954); Thomsen, Confidentiality of the Presentence Report: A Middle Position, 28 Fed. Prob., March 1964, p. 8; Wyzanski, A Trial Judge's Freedom and Responsibility, 65 Harv.L.Rev. 1281, 1291-2 (1952); Note, Employment of Social Investigation Reports in Criminal and Juvenile Proceedings, 58 Colum. L. Rev. 702 (1958); cf. Kadish, The Advocate and the Expert: Counsel in the Peno-Correctional Process, 45 Minn. L. Rev. 803, 806, (1961). For arguments opposing disclosure, see Barnett and Gronewold, Confidentiality of the Presentence Report, 26 Fed. Prob. March 1962, p. 26; Judicial Conference Committee on Administration of the Probation System, Judicial Opinion on Proposed Change in Rule 32(c) of the Federal Rules of Criminal Procedure—a Survey (1964); Keve, The Probation Officer Investigates, 6-15 (1960); Parsons, The Presentence Investigation Report Must be Preserved as a Confidential Document, 28 Fed. Prob. March 1964, p. 3; Sharp, The Confidential Nature of Presentence Reports, 5 Cath.U.L.Rev. 127 (1955); Wilson, A New Arena is Emerging to Test the Confidentiality of Presentence Reports, 25 Fed. Prob. Dec. 1961, p. 6; Federal Judge's Views on Probation Practices, 24 Fed. Prob. March 1960, p. 10.

In a few jurisdictions the defendant is given a right of access to the presentence report. In England and California a copy of the report is given to the defendant in every case. English Criminal Justice Act of 1948, 11 & 12 Geo. 6, c. 58, § 43; Cal. Pen. C. § 1203. In Alabama the defendant has a right to inspect the report. Ala. Code, Title 42, § 23. In Ohio and Virginia the probation officer reports in open court and the defendant is given the right to examine him on his report. Ohio Rev. Code, § 2947.06; Va. Code, § 53-278.1. The Minnesota Criminal Code of 1963, § 609.115(4), provides that any presentence report "shall be open for inspection by the prosecuting attorney and the defendant's attorney prior to sentence and on the request of either of them a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs." Cf. Model Penal Code § 7.07(5) (P.O.D. 1962): "Before imposing sentence, the Court shall advise the defendant or his counsel of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. The sources of confidential information need not, however, be disclosed."

Practice in the federal courts is mixed, with a substantial minority of judges permitting disclosure while most deny it. See the recent survey prepared for the Judicial Conference of the District of Columbia by the Junior Bar Section of the Bar Association of the District of Columbia, reported in Conference Papers on Discovery in Federal Criminal Cases, 33 F.R.D. 101, 125-127 (1963). See also Gronewold, Presentence Investigation Practices in the Federal Probation System, Fed. Prob. Sept. 1958, pp. 27, 31. For divergent judicial opinions see *Smith* v. *United States*, 223 F. 2d 750, 754 (5th Cir. 1955) (supporting disclosure); *United States* v. *Durham*, 181 F. Supp. 503 (D.D.C. 1960) (supporting secrecy).

Substantial objections to compelling disclosure in every case have been advanced by federal judges, including many who in practice often disclose all or parts of presentence reports. See Judicial Conference Committee on the Administration of the Probation System, Judicial Opinion on Proposed Change in Rule 32(c) of the Federal Rules of Criminal Procedure—A Survey (1964). Hence, the amendment goes no further than to make it clear that courts may disclose all or part of the presentence report to the defendant or to his counsel. It is hoped that courts will make increasing use of their discretion to disclose so that defendants generally may be given full opportunity to rebut or explain facts in presentence reports which will be material factors in determining sentences. For a description of such a practice in one district, see Thomsen, Confidentiality of the Presentence Report: A Middle Position, 28 Fed. Prob., March 1964, p. 8.

It is also provided that any material disclosed to the defendant or his counsel shall be disclosed to the attorney for the government. Such disclosure will permit the government to participate in the resolution of any factual questions raised by the defendant.

Subdivision (f).—This new subdivision writes into the rule the procedure which the cases have derived from the provision in 18 U.S.C. § 3653 that a person arrested for violation of probation "shall be taken before the court" and that thereupon the court may revoke the probation. See *Escoe* v. *Zerbst*, 295 U.S. 490 (1935); *Brown* v. *United States*, 236 F. 2d 253 (9th Cir. 1956) certiorari denied 356 U.S. 922 (1958). Compare Model Penal Code § 301.4 (P.O.D. 1962); Hink, The Application of Constitutional Standards of Protection to Probation, 29 U.Chi.L.Rev. 483 (1962).

1972 AMENDMENT

Subdivision (b)(2) is new. It is intended to provide procedural implementation of the recently enacted criminal forfeiture provisions of the Organized Crime Control Act of 1970, Title IX, § 1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, § 408(a)(2).

18 U.S.C. § 1963(c) provides for property seizure and disposition. In part it states:

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper.

Although not specifically provided for in the Comprehensive Drug Abuse Prevention and Control Act of 1970, the provision of Title II, § 408(a)(2) forfeiting "profits" or "interest" will need to be implemented procedurally, and therefore new rule 32(b)(2) will be applicable also to that legislation.

For a brief discussion of the procedural implications of a criminal forfeiture, see Advisory Committee Note to rule 7(c)(2).

1974 AMENDMENT

Subdivision (a)(1) is amended by deleting the reference to commitment or release pending sentencing. This issue is dealt with explicitly in the proposed revision of rule 46(c).

Subdivision (a)(2) is amended to make clear that there is no duty on the court to advise the defendant of the right to appeal after sentence is imposed following a plea of guilty or nolo contendere.

To require the court to advise the defendant of a right to appeal after a plea of guilty, accepted pursuant to the increasingly stringent requirements of rule 11, is likely to be confusing to the defendant. See American Bar Association Standards Relating to Criminal Appeals § 2.1(b) (Approved Draft, 1970), limiting the court's duty to advice to "contested cases."

The Advisory Committee is of the opinion that such advice, following a sentence imposed after a plea of guilty, will merely tend to build false hopes and encourage frivolous appeals, with the attendant expense to the defendant or the taxpayers.

Former rule 32(a)(2) imposes a duty only upon conviction after "trial on a plea of not guilty." The few federal cases dealing with the question have interpreted rule 32(a)(2) to say that the court has no duty to advise defendant of his right to appeal after conviction following a guilty plea. *Burton* v. *United States*, 307 F.Supp. 448, 450 (D.Ariz. 1970); *Alaway* v. *United States*, 280 F.Supp. 326, 336 (C.D.Calif. 1968); *Crow* v. *United States*, 397 F.2d 284, 285 (10th Cir. 1968).

Prior to the 1966 amendment of rule 32, the court's duty was even more limited. At that time [rule 37(a)(2)] the court's duty to advise was limited to those situations in which sentence was imposed after trial upon a not guilty plea of a defendant not represented by counsel. 8A J. Moore, Federal Practice ¶ 32.01[3] (2d ed. Cipes 1969); C. Wright, Federal Practice and Procedure: Criminal § 528 (1969); 5 L. Orfield, Criminal Procedure Under the Federal Rules § 32:11 (1967).

With respect to appeals in forma pauperis, see appellate rule 24.

Subdivision (c)(1) makes clear that a presentence report is required except when the court otherwise directs for reasons stated of record. The requirement of reasons on the record for not having a presentence report is intended to make clear that such a report ought to be routinely required except in cases where there is a reason for not doing so. The presentence report is of great value for correctional purposes and will serve as a valuable aid in reviewing sentences to the extent that sentence review may be authorized by future rule change. For an analysis of the current rule as it relates to the situation in which a presentence investigation is required, see C. Wright, Federal Practice and Procedure: Criminal § 522 (1969); 8A J. Moore, Federal Practice ¶ 32.03[1] (2d ed. Cipes 1969).

Subdivision (c)(1) is also changed to permit the judge, after obtaining defendant's consent, to see the presentence report in order to decide whether to accept a plea agreement, and also to expedite the imposition of sentence in a case in which the defendant has indicated that he may plead guilty or nolo contendere.

Former subdivision (c)(1) provides that "The report shall not be submitted to the court * * * unless the defendant has pleaded guilty * * *." This precludes a judge from seeing a presentence report prior to the acceptance of the plea of guilty. L. Orfield, Criminal Procedure Under the Federal Rules § 32:35 (1967); 8A J. Moore, Federal Practice ¶ 32.03[2], p. 32-22 (2d ed. Cipes 1969); C. Wright, Federal Practice and Procedure: Criminal § 523, p. 392 (1969); *Gregg* v. *United States*, 394 U.S. 489, 89 S.Ct. 1134, 22 L.Ed.2d 442 (1969).

Because many plea agreements will deal with the sentence to be imposed, it will be important, under rule 11, for the judge to have access to sentencing information as a basis for deciding whether the plea agreement is an appropriate one.

It has been suggested that the problem be dealt with by allowing the judge to indicate approval of the plea agreement subject to the condition that the information in the presentence report is consistent with what he has been told about the case by counsel. See American Bar Association, Standards Relating to Pleas of Guilty § 3.3 (Approved Draft, 1963); President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society 136 (1967).

Allowing the judge to see the presentence report prior to his decision as to whether to accept the plea agreement is, in the view of the Advisory Committee, preferable to a conditional acceptance of the plea. See Enker, Perpectives on Plea Bargaining, Appendix A of President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts at 117 (1967). It enables the judge to have all of the information available to him at the time he is called upon to decide whether or not to accept the plea of guilty and thus avoids the necessity of a subsequent appearance whenever the information is such that the judge decides to reject the plea agreement.

There is presently authority to have a presentence report *prepared* prior to the acceptance of the plea of guilty. In *Gregg* v. *United States*, 394 U.S. 489, 491, 89 S.Ct. 1134 22 L.Ed.2d 442 (1969), the court said that the "language [of rule 32] clearly permits the preparation of a presentence report before guilty plea or conviction * * *." In footnote 3 the court said:

The history of the rule confirms this interpretation. The first Preliminary Draft of the rule would have required the consent of the defendant or his attorney to commence the investigation before the determination of guilt. Advisory Committee on Rules of Criminal Procedure, Fed.Rules Crim.Proc., Preliminary Draft 130, 133 (1943). The Second Preliminary Draft omitted this requirement and imposed no limitation on the time when the report could be made and submitted to the court. Advisory Committee on Rules of Criminal Procedure, Fed.Rules Crim.Proc. Second Preliminary Draft 126-128 (1944). The third and final draft, which was adopted as Rule 32, was evidently a compromise between those who opposed any time limitation, and those who preferred that the entire investigation be conducted after determination of guilt. See 5 L. Orfield, Criminal Procedure Under the Federal Rules § 32.2 (1967).

Where the judge rejects the plea agreement after seeing the presentence report, he should be free to recuse himself from later presiding over the trial of the case. This is left to the discretion of the judge. There are instances involving prior convictions where a judge may have seen a presentence report, yet can properly try a case on a plea of not guilty. *Webster* v. *United States*, 330 F. Supp. 1080 (D.C., 1971). Unlike

the situation in *Gregg* v. *United States*, subdivision (e)(3) provides for disclosure of the presentence report to the defendant, and this will enable counsel to know whether the information thus made available to the judge is likely to be prejudicial. Presently trial judges who decide pretrial motions to suppress illegally obtained evidence are not, for that reason alone, precluded from presiding at a later trial.

Subdivision (c)(3)(A) requires disclosure of presentence information to the defense, exclusive of any recommendation of sentence. The court is required to disclose the report to defendant or his counsel unless the court is of the opinion that disclosure would seriously interfere with rehabilitation, compromise confidentiality, or create risk of harm to the defendant or others.

Any recommendation as to sentence should not be disclosed as it may impair the effectiveness of the probation officer if the defendant is under supervision on probation or parole.

The issue of disclosure of presentence information to the defense has been the subject of recommendations from the Advisory Committee in 1944, 1962, 1964, and 1966. The history is dealt with in considerable detail in C. Wright, Federal Practice and Procedure: Criminal § 524 (1969), and 8A J. Moore, Federal Practice ¶ 32.03[4] (2d ed. Cipes 1969).

In recent years, three prestigious organizations have recommended that the report be disclosed to the defense. See American Bar Association, Standards Relating to Sentencing Alternatives and Procedures § 4.4 (Approved Draft, 1968); American Law Institute Model Penal Code § 7.07(5) (P.O.D. 1962); National Council on Crime and Delinquency, Model Sentencing Act § 4 (1963). This is also the recommendation of the President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society (1967) at p. 145.

In the absence of compelling reasons for nondisclosure of special information, the defendant and his counsel should be permitted to examine the entire presentence report.

The arguments for and against disclosure are well known and are effectively set forth in American Bar Association Standards Relating to Sentencing Alternatives and Procedures, § 4.4 Commentary at pp. 214–225 (Approved Draft, 1968). See also Lehrich, The Use and Disclosure of Presentence Reports in the United States, 47 F.R.D. 225 (1969).

A careful account of existing practices in Detroit, Michigan and Milwaukee, Wisconsin is found in R. Dawson, Sentencing (1969).

Most members of the federal judiciary have, in the past, opposed compulsory disclosure. See the view of District Judge Edwin M. Stanley, American Bar Association Standards Relating to Sentencing Alternatives and Procedures. Appendix A. (Appendix A also contains the results of a survey of all federal judges showing that the clear majority opposed disclosure.)

The Advisory Committee is of the view that accuracy of sentencing information is important not only to the defendant but also to effective correctional treatment of a convicted offender. The best way of insuring accuracy is disclosure with an opportunity for the defendant and counsel to point out to the court information thought by the defense to be inaccurate, incomplete, or otherwise misleading. Experience in jurisdictions which require disclosure does not lend support to the argument that disclosure will result in less complete presentence reports or the argument that sentencing procedures will become unnecessarily protracted. It is not intended that the probation officer would be subjected to any rigorous examination by defense counsel, or that he will even be sworn to testify. The proceedings may be very informal in nature unless the court orders a full hearing.

Subdivision (c)(3)(B) provides for situations in which the sentencing judge believes that disclosure should not be made under the criteria set forth in subdivision (c)(3)(A). He may disclose only a summary of that factual information "to be relied on in determining sentence." This is similar to the proposal of the American Bar Association Standards Relating to Sentencing Alternatives and Procedures § 4.4(b) and Commentary at pp. 216–224.

Subdivision (c)(3)(D) provides for the return of disclosed presentence reports to insure that they do not become available to unauthorized persons. See National Council on Crime and Delinquency, Model Sentencing Act § 4 (1963): "Such reports shall be part of the record but shall be sealed and opened only on order of the court."

Subdivision (c)(3)(E) makes clear that diagnostic studies under 18 U.S.C. §§ 4208(b), 5010(c), or 5034 are covered by this rule and also that 18 U.S.C. § 4252 is included within the disclosure provisions of subdivision (c). Section 4252 provides for the presentence examination of an "eligible offender" who is believed to be an addict to determine whether "he is an addict and is likely to be rehabilitated through treatment."

Both the Organized Crime Control Act of 1970 [§ 3775(b)] and the Comprehensive Drug Abuse Prevention and Control Act of 1970 [§ 409(b)] have special provisions for presentence investigation in the implementation of the dangerous special offender provision. It is however, unnecessary to incorporate them by reference in rule 32 because each contains a specific provision requiring disclosure of the presentence report. The judge does have authority to withhold some information "in extraordinary cases" provided notice is given the parties and the court's reasons for withholding information are made part of the record.

Subdivision (e) is amended to clarify the meaning.

Notes of Committee on the Judiciary, House Report No. 94-247

A. Amendments Proposed by the Supreme Court

Rule 32 of the Federal Rules of Criminal Procedure deals with sentencing matters.

Proposed subdivision (a)(2) provides that the court is not dutybound to advise the defendant of a right to appeal when the sentence is imposed following a plea of guilty or nolo contendere.

Proposed subdivision (e) provides that the probation service must make a presentence investigation and report unless the court orders otherwise "for reasons stated on the record." The presentence report will not be submitted to the court until after the defendant pleads nolo contendere or guilty, or is found guilty, unless the defendant consents in writing. Upon the defendant's request, the court must permit the defendant to read the presentence report, except for the recommendation as to sentence. However, the court may decline to let the defendant read the report if it contains (a) diagnostic opinion that might seriously disrupt a rehabilitation program, (b) sources of information obtained upon a promise of confidentiality, or (c) any other information that, if disclosed, might result in harm to the defendant or other persons. The court must give the defendant an opportunity to comment upon the presentence report. If the court decides that the defendant should not see the report, then it must provide the defendant, orally or in writing, a summary of the factual information in the report upon which it is relying in determining sentence. No party may keep the report or make copies of it.

B. Committee Action. The Committee added language to subdivision (a)(1) to provide that the attorney for the government may speak to the court at the time of sentencing. The language does not require that the attorney for the government speak but permits him to do so if he wishes.

The Committee recast the language of subdivision (c)(1), which defines when presentence reports must be obtained. The Committee's provision makes it more difficult to dispense with a presentence report. It requires that a presentence report be made unless (a) the defendant waives it, or (b) the court finds that the record contains sufficient information to enable the meaningful exercise of sentencing discretion and explains this finding on the record. The Committee believes that presentence reports are important aids to sentencing and should not be dispensed with easily.

The Committee added language to subdivision (c)(3)(A) that permits a defendant to offer testimony or information to rebut alleged factual inaccuracies in the presentence report. Since the presentence report is to be used by the court in imposing sentence and since the consequence of any significant inaccuracy can be very serious to the defendant, the Committee believes that it is essential that the presentence report be completely accurate in every material respect. The Committee's addition to subdivision (c)(3)(A) will help insure the accuracy of the presentence report.

The Committee added language to subdivision (c)(3)(D) that gives the court the discretion to permit either the prosecutor or the defense counsel to retain a copy of the presentence report. There may be situations when it would be appropriate for either or both of the parties to retain the presentence report. The Committee believes that the rule should give the court the discretion in such situations to permit the parties to retain their copies.

REFERENCES IN TEXT

Section 4208(b) of this title, referred to in subsec. (c)(3)(E), was repealed by Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219.

CHANGE OF NAME

Section 12 of Pub. L. 94-233, Mar. 15, 1976, 90 Stat. 233, provided that references to the United States Parole Board be deemed to refer to the United States Parole Commission.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974, and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Appeal as stay of sentence, see rule 38.

Commencement of sentence, see section 3568 of this title.

Conviction, not working corruption of blood or forfeiture of estate, see section 3563 of this title.

Correction of sentence, see rule 35.

Criminal contempt, punishment for, see rule 42.

Death sentence, dissection prescribable, see section 3567.

Execution of death sentence, see section 3566 of this title.

Expenses of execution of sentence, payments, see section 4007 of this title.

Imprisonment until fine or penalty is paid, execution on judgment, see section 3565 of this title.

Mental competency of prisoner, examination on termination of sentence, see section 4247 of this title.

Motions attacking sentence, vacating, setting aside or correcting, see section 2255 of Title 28, Judiciary and Judicial Procedure.

Petty offenses, sentence by United States Magistrate, see section 3401 of this title.

Pillory and whipping prohibited, see section 3564 of this title.

Presence of defendant, imposition of sentence, see rule 43.

Presidential remission, not affecting unremitted part, see section 3570 of this title.

Reduction of sentence, generally, see rule 35.

Rule 33. New Trial

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule enlarges the time limit for motions for new trial on the ground of newly discovered evidence, from 60 days to two years; and for motions for new trial on other grounds from three to five days. Otherwise, it substantially continues existing practice. See Rule II of the Criminal Appeals Rules of 1933, 292 U.S. 661 [18 U.S.C. formerly following § 688]. Cf. Rule 59(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

1966 AMENDMENT

The amendments to the first two sentences make it clear that a judge has no power to order a new trial on his own motion, that he can act only in response to a motion timely made by a defendant. Problems of double jeopardy arise when the court acts on its own motion. See *United States* v. *Smith*, 331 U.S. 469 (1947). These amendments do not, of course, change the power which the court has in certain circumstances, prior to verdict or finding of guilty, to declare a mistrial and order a new trial on its own motion. See e.g., *Gori* v. *United States*, 367 U.S. 364 (1961); *Downum* v. *United States*, 372 U.S. 734 (1963); *United States* v. *Tateo*, 377 U.S. 463 (1964). The amendment to the last sentence changes the time in which the motion may be made to 7 days. See the Advisory Committee's Note to Rule 29.

CROSS REFERENCES

Acquittal, alternative on renewal of motion for, see rule 29.

Enlargement of time for action not permitted, see rule 45.

Form of motion, see form 23.

Judges, disability after verdict or finding of guilt, see rule 25.

Mental incompetency of accused discovered after trial as ground, see section 4245 of this title.

Remedies on motion attacking sentence of prisoner in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

Several defendants, inability of jury to agree as to verdict, see rule 31.

Rule 34. Arrest of Judgment

The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or *nolo contendere*, or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule continues existing law except that it enlarges the time for making motions in arrest of judgment from 3 days to 5 days. See Rule II (2) of Criminal Appeals Rules of 1933, 292 U.S.C. 661 [18 U.S.C. formerly following § 688].

1966 AMENDMENT

The words "on motion of a defendant" are added to make clear here, as in Rule 33, that the court may act only pursuant to a timely motion by the defendant.

The amendment to the second sentence is designed to clarify an ambiguity in the rule as originally drafted. In *Lott* v. *United States*, 367 U.S. 421 (1961) the Supreme Court held that when a defendant pleaded nolo contendere the time in which a motion could be made under this rule did not begin to run until entry of the judgment. The Court held that such a plea was not a "determination of guilty." No reason of policy appears to justify having the time for making this motion commence with the verdict or finding of guilt but not with the acceptance of the plea of nolo contendere or the plea of guilty. The amendment changes the result in the *Lott* case and makes the periods uniform. The amendment also changes the time in which the motion may be made to 7 days. See the Advisory Committee's Note to Rule 29.

CROSS REFERENCES

Enlargement of time not permitted for motion under this rule, see rule 45.

Form of motion in arrest of judgment, see form 24.

Rule 35. Correction or Reduction of Sentence

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence of the rule continues existing law. The second sentence introduces a flexible time limitation on the power of the court to reduce a sentence, in lieu of the present limitation of the term of court. Rule 45(c) abolishes the expiration of a term of court as a time limitation, thereby necessitating the introduction of a specific time limitation as to all proceedings now governed by the term of court as a limitation. The Federal Rules of Civil Procedure (Rule 6(c)), 28 U.S.C. Appendix, abolishes the term of court as a time limitation in respect to civil actions. The two rules together thus do away with the significance of the expiration of a term of court which has largely become an anachronism.

1966 AMENDMENT

The amendment to the first sentence gives the court power to correct a sentence imposed in an illegal manner within the same time limits as those provided for reducing a sentence. In *Hill* v. *United States*, 368 U.S. 424 (1962) the court held that a motion to correct an illegal sentence was not an appropriate way for a defendant to raise the question whether when he appeared for sentencing the court had afforded him an opportunity to make a statement in his own behalf as required by Rule 32(a). The amendment recognizes the distinction between an illegal sentence, which may be corrected at any time, and a sentence imposed in an illegal manner, and provides a limited time for correcting the latter.

The second sentence has been amended to increase the time within which the court may act from 60 days to 120 days. The 60-day period is frequently too short to enable the defendant to obtain and file the evidence, information and argument to support a reduction in sentence. Especially where a defendant has been committed to an institution at a distance from the sentencing court, the delays involved in institutional mail inspection procedures and the time required to contact relatives, friends and counsel may result in the 60-day period passing before the court is able to consider the case.

The other amendments to the second sentence clarify ambiguities in the timing provisions. In those cases in which the mandate of the court of appeals is issued prior to action by the Supreme Court on the defendant's petition for certiorari, the rule created problems in three situations: (1) If the writ were denied, the last phrase of the rule left obscure the point at which the period began to run because orders of the Supreme Court denying applications for writs are not sent to the district courts. See *Johnson* v. *United States*, 235 F. 2d 459 (5th Cir. 1956). (2) If the writ were granted but later dismissed as improvidently granted, the rule did not provide any time period for reduction of sentence. (3) If the writ were granted and later the Court affirmed a judgment of the court of appeals which had affirmed the conviction, the rule did not provide any time period for reduction of sentence. The amendment makes it clear that in each of these three situations the 120-period commences to run with the entry of the order or judgment of the Supreme Court.

The third sentence has been added to make it clear that the time limitation imposed by Rule 35 upon the reduction of a sentence does not apply to such reduction upon the revocation of probation as authorized by 18 U.S.C. § 3653.

CROSS REFERENCES

Enlargement of time not permitted for motion under this rule, see rule 45.

Expiration of term of court affecting power to act, see rule 45.

Presence of defendant, necessity of, see rule 43.

Remedies on motion attacking sentence while in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

Rule 36. Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule continues existing law. Rupinski v. United States, 4 F.2d 17, C.C.A. 6th. The rule is similar to Rule 60(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

CROSS REFERENCES

Remedies on motion attacking sentence while in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Correction of clerical mistakes, see rule 60, Title 28. Appendix, Judiciary and Judicial Procedure.

VIII. APPEAL

Rule 37. Abrogated. Dec. 4, 1967, eff. July 1, 1968

NOTES OF ADVISORY COMMITTEE ON RULES

These are the criminal rules [Rules 37, 38(b), (c), 39] relating to appeals, the provisions of which are transferred to and covered by the Federal Rules of Appellate Procedure and (in the case of Rule 37(b) and (c)) by the Rules of the Supreme Court.

Rule 38. Stay of Execution, and Relief Pending Review

(a) Stay of Execution

(1) *Death.* A sentence of death shall be stayed if an appeal is taken.

(2) *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the Federal Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where his appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals.

(3) *Fine.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) *Probation.* An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

(b), (c) Abrogated. Dec. 4, 1967, eff. July 1, 1968

(As amended Dec. 27, 1948, eff. Jan. 1, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule substantially continues existing law except that it provides that in case an appeal is taken from a judgment imposing a sentence of imprisonment, a stay shall be granted only if the defendant so elects, or is admitted to bail. Under the present rule the sentence is automatically stayed unless the defendant elects to commence service of the sentence pending appeal. The new rule merely changes the burden of making the election. See Rule V of the Criminal Appeals Rules, 1933, 292 U.S. 661 [18 U.S.C. formerly following § 688].

1966 AMENDMENT

A defendant sentenced to a term of imprisonment is committed to the custody of the Attorney General who is empowered by statute to designate the place of his confinement. 18 U.S.C. § 4082. The sentencing court has no authority to designate the place of imprisonment. See, e.g., *Hogue* v. *United States*, 287 F. 2d 99 (5th Cir. 1961), cert. den., 368 U.S. 932 (1961).

When the place of imprisonment has been designated, and notwithstanding the pendency of an appeal, the defendant is usually transferred from the place of his temporary detention within the district of his conviction unless he has elected "not to commence service of the sentence." This transfer can be avoided only if the defendant makes the election, a course sometimes advised by counsel who may deem it necessary to consult with the defendant from time to time before the appeal is finally perfected. However, the election deprives the defendant of a right to claim credit for the time spent in jail pending the disposition of the appeal because 18 U.S.C. § 3568 provides that the sentence of imprisonment commences, to run only from "the date on which such person is received at the penitentiary, reformatory, or jail for service of said sentence." See, e.g., *Shelton* v. *United States* 234 F. 2d 132 (5th Cir. 1956).

The amendment eliminates the procedure for election not to commence service of sentence. In lieu thereof it is provided that the court may recommend to the Attorney General that the defendant be retained at or transferred to a place of confinement near the place of trial or the place where the appeal is to be heard for the period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals. Under this procedure the defendant would no longer be required to serve dead time in a local jail in order to assist in preparation of his appeal.

1968 AMENDMENT

Subdivisions (b) and (c) of this rule relate to appeals, the provisions of which are transferred to and covered by the Federal Rules of Appellate Procedure. See Advisory Committee Note under rule 37.

1972 AMENDMENT

Rule 38(a)(2) is amended to reflect rule 9(b), Federal Rules of Appellate Procedure. The criteria for the stay of a sentence of imprisonment pending disposition of an appeal are those specified in rule 9(c) which incorporates 18 U.S.C. § 3148 by reference.

The last sentence of subdivision (a)(2) is retained although easy access to the defendant has become less important with the passage of the Criminal Justice Act which provides for compensation to the attorney to travel to the place at which the defendant is confined. Whether the court will recommend confinement near the place of trial or place where the appeal is to be heard will depend upon a balancing of convenience against the possible advantage of confinement at a more remote correctional institution where facilities and program may be more adequate.

The amendment to subdivision (a)(4) gives the court discretion in deciding whether to stay the order placing the defendant on probation. It also makes mandatory the fixing of conditions for the stay if a stay is granted. The court cannot release the defendant pending appeal without either placing him on probation or fixing the conditions for the stay under the Bail Reform Act, 18 U.S.C. § 3148.

Former rule 38(a)(4) makes mandatory a stay of an order placing the defendant on probation whenever an appeal is noted. The court may or may not impose conditions upon the stay. See rule 46, Federal Rules of Criminal Procedure; and the Bail Reform Act, 18 U.S.C. § 3148.

Having the defendant on probation during the period of appeal may serve the objectives of both community protection and defendant rehabilitation. In current practice, the order of probation is sometimes stayed for an appeal period as long as two years. In a situation where the appeal is unsuccessful, the defendant must start under probation supervision after so long a time that the conditions of probation imposed at the time of initial sentencing may no longer appropriately relate either to the defendant's need for rehabilitation or to the community's need for protection. The purposes of probation are more likely to be served if the judge can exercise discretion, in appropriate cases, to require the defendant to be under probation during the period of appeal. The American Bar Association Project on Standards for Criminal Justice takes the position that prompt imposition of sentence aids in the rehabilitation of defendants, ABA Standards Relating to Pleas of Guilty § 1.8(a)(i), Commentary p. 40 (Approved Draft, 1968). See also Sutherland and Cressey, Principles of Criminology 336 (1966).

Under 18 U.S.C. § 3148 the court now has discretion to impose conditions of release which are necessary to protect the community against danger from the defendant. This is in contrast to release prior to conviction, where the only appropriate criterion is insuring the

appearance of the defendant. 18 U.S.C. § 3146. Because the court may impose conditions of release to insure community protection, it seems appropriate to enable the court to do so by ordering the defendant to submit to probation supervision during the period of appeal, thus giving the probation service responsibility for supervision.

A major difference between probation and release under 18 U.S.C. § 3148 exists if the defendant violates the conditions imposed upon his release. In the event that release is under 18 U.S.C. § 3148, the violation of the condition may result in his being placed in custody pending the decision on appeal. If the appeal were unsuccessful, the order placing him on probation presumably would become effective at that time, and he would then be released under probation supervision. If the defendant were placed on probation, his violation of a condition could result in the imposition of a jail or prison sentence. If the appeal were unsuccessful, the jail or prison sentence would continue to be served.

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subsec. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Bail, generally, see rule 46.

Rule 39. Abrogated. Dec. 4, 1967, eff. July 1, 1968

NOTES OF ADVISORY COMMITTEE ON RULES

This rule relating to appeals is abrogated since the provisions of the rule are transferred to and covered by the Federal Rules of Appellate Procedure. See Advisory Committee Note under rule 37.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Commitment to Another District; Removal

(a) Arrest in Nearby District

If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same state, or on a warrant issued upon a complaint in another state but at a place less than 100 miles from the place of arrest, or without a warrant for an offense committed in another district in the same state or in another state but at a place less than 100 miles from the place of the arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate; preliminary proceedings shall be conducted in accordance with Rules 5 and 5.1; and if held to answer, he shall be held to answer to the district court for the district in which the prosecution is pending, or if the arrest was without a warrant, for the district in which the offense was committed. If such an arrest is made on a warrant issued on an indictment or information, the person arrested shall be taken before the district court in which the prosecution is pending or, for the purpose of admission to bail, before a federal magistrate in the district of the arrest in accordance with provisions of Rule 9(c)(1).

(b) Arrest in Distant District

(1) *Appearance before federal magistrate.* If a person is arrested upon a warrant issued in another state at a place 100 miles or more from the place of arrest, or without a warrant for an offense committed in another state or a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate in the district in which the arrest was made.

(2) *Statement by federal magistrate.* The federal magistrate shall inform the defendant of the rights specified in Rule 5(c), of his right to have a hearing or to waive a hearing by signing a waiver before the federal magistrate, of the provisions of Rule 20, and shall authorize his release under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148.

(3) *Hearing; warrant of removal or discharge.* The defendant shall not be called upon to plead. If the defendant waives hearing, a judge of the United States shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the federal magistrate shall hear the evidence. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If a United States magistrate hears the evidence he shall report his findings and recommendations to a judge of the United States. If it appears from the United States magistrate's report or from the evidence adduced before the judge of the United States that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. There is "sufficient grounds" for ordering removal under the following circumstances:

(A) If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment.

(B) If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged.

(C) If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense is alleged to have been committed is presented.

(4) *Bail.* If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(5) *Authority of United States magistrate.* When authorized by a rule of the district court, adopted in accordance with 28 U.S.C. § 636(b), a United States magistrate may issue

a warrant of removal under subdivision (b)(3) of this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule modifies and revamps existing procedure. The present practice has developed as a result of a series of judicial decisions, the only statute dealing with the subject being exceedingly general, 18 U.S.C. former § 591 (now § 3041) (Arrest and removal for trial):

For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. * * * Where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

The scope of a removal hearing, the issues to be considered, and other similar matters are governed by judicial decisions, *Beavers* v. *Henkel*, 194 U.S. 73, 24, S. Ct. 605, 48 L. Ed. 882; *Tinsley* v. *Treat*, 205 U.S. 20, 27 S. Ct. 430, 51 L. Ed. 689; *Henry* v. *Henkel*, 235 U.S. 219; *Rodman* v. *Pothier*, 264 U.S. 399, 44 S. Ct. 360, 68 L. Ed. 759; *Morse* v. *United States*, 267 U.S. 80, 45 S. Ct. 209, 69 L. Ed. 522; *Fetters* v. *United States ex rel. Cunningham*, 283 U.S. 638, 51 S. Ct. 596, 75 L. Ed. 1321; *United States ex rel. Kassin* v. *Mulligan*, 295 U.S. 396, 55 S. Ct. 781, 79 L. Ed. 1501; see, also, 9 Edmunds, Cyclopedia of Federal Procedure 3905, et seq.

2. The purpose of removal proceedings is to accord safeguards to a defendant against an improvident removal to a distant point for trial. On the other hand, experience has shown that removal proceedings have at times been used by defendants for dilatory purposes and in attempting to frustrate prosecution by preventing or postponing transportation even as between adjoining districts and between places a few miles apart. The object of the rule is adequately to meet each of these two situations.

3. For the purposes of removal, all cases in which the accused is apprehended in a district other than that in which the prosecution is pending have been divided into two groups: first, those in which the place of arrest is either in another district of the same State, or if in another State, then less than 100 miles from the place where the prosecution is pending; and second, cases in which the arrest occurs in a State other than that in which the prosecution is pending and the place of arrest is 100 miles or more distant from the latter place.

In the first group of cases, removal proceedings are abolished. The defendant's right to the usual preliminary hearing is, of course, preserved, but the committing magistrate, if he holds defendant would bind him over to the district court in which the prosecution is pending. As ordinarily there are no removal proceedings in State prosecutions as between different parts of the same State, but the accused is transported by virtue of the process under which he was arrested, it seems reasonable that no removal proceedings should be required in the Federal courts as between districts in the same State. The provision as to arrest in another State but at a place less than 100 miles from the place where the prosecution is pending was added in order to preclude obstruction against bringing the defendant a short distance for trial.

In the second group of cases mentioned in the first paragraph, removal proceedings are continued. The practice to be followed in removal hearings will depend on whether the demand for removal is based upon an indictment or upon an information or complaint. In the latter case, proof of identity and proof of reasonable cause to believe the defendant guilty will have to be adduced in order to justify the issuance of a warrant of removal. In the former case, proof of identity coupled with a certified copy of the indictment will be sufficient, as the indictment will be conclusive proof of probable cause. The distinction is based on the fact that in case of an indictment, the grand jury, which is an arm of the court, has already found probable cause. Since the action of the grand jury is not subject to review by a district judge in the district in which the grand jury sits, it seems illogical to permit such review collaterally in a removal proceeding by a judge in another district.

4. For discussions of this rule see, Homer Cummings, 29 A.B.A. Jour. 654, 656; Holtzoff, 3 F.R.D. 445, 450-452; Holtzoff, 12 George Washington L.R. 119, 127-130; Holtzoff, The Federal Bar Journal, October 1944, 18-37; Berge, 42 Mich.L.R. 353, 374; Medalie, 4 Lawyers Guild R. (3)1, 4.

Note to Subdivision (b)

The rule provides that all removal hearings shall take place before a United States commissioner or a Federal judge. It does not confer such jurisdiction on State or local magistrates. While theoretically under existing law State and local magistrates have authority to conduct removal hearings, nevertheless as a matter of universal practice, such proceedings are always conducted before a United States commissioner or a Federal judge, 9 Edmunds, Cyclopedia of Federal Procedure 3919.

1966 AMENDMENT

The amendment conforms to the change made in the corresponding procedure in Rule 5(b).

1972 AMENDMENT

Subdivision (a) is amended to make clear that the person shall be taken before the federal magistrate "without unnecessary delay." Although the former rule was silent in this regard, it probably would have been interpreted to require prompt appearance, and there is therefore advantage in making this explicit in the rule itself. See C. Wright, Federal Practice and Procedure: Criminal § 652 (1969, Supp. 1971). Subdivision (a) is amended to also make clear that the person is to be brought before a "federal magistrate" rather than a state or local magistrate authorized by 18 U.S.C. § 3041. The former rules were inconsistent in this regard. Although rule 40(a) provided that the person may be brought before a state or local officer authorized by former rule 5(a), such state or local officer lacks authority to conduct a preliminary examination under rule 5(c), and a principal purpose of the appearance is to hold a preliminary examination where no prior indictment or information has issued. The Federal Magistrates Act should make it possible to bring a person before a federal magistrate. See C. Wright, Federal Practice and Procedure: Criminal § 653, especially n.35 (1969, Supp. 1971).

Subdivision (b)(2) is amended to provide that the federal magistrate should inform the defendant of the fact that he may avail himself of the provisions of rule 20 if applicable in the particular case. However, the failure to so notify the defendant should not invalidate the removal procedure. Although the old rule is silent in this respect, it is current practice to so notify the defendant, and it seems desirable, therefore, to make this explicit in the rule itself.

The requirement that an order of removal under subdivision (b)(3) can be made only by a judge of the United States and cannot be made by a United States magistrate is retained. However, subdivision (b)(5) authorizes issuance of the warrant of removal by a United States magistrate if he is authorized to do so

by a rule of district court adopted in accordance with 28 U.S.C. § 636(b):

Any district court * * * by the concurrence of a majority of all the judges * * * may establish rules pursuant to which any full-time United States magistrate * * * may be assigned * * * such additional duties as are not inconsistent with the Constitution and laws of the United States.

Although former rule 40(b)(3) required that the warrant of removal be issued by a judge of the United States, there appears no constitutional or statutory prohibition against conferring this authority upon a United States magistrate in accordance with 28 U.S.C. § 636(b). The background history is dealt with in detail in 8A J. Moore, Federal Practice ¶¶ 40.01 and 40.02 (2d ed. Cipes 1970, Supp. 1971).

Subdivision (b)(4) makes explicit reference to provisions of the Bail Reform Act of 1966 by incorporating a cross-reference to 18 U.S.C. § 3146 and § 3148.

CROSS REFERENCES

Habeas corpus, no right of appeal from detention pending removal proceedings, see section 2253 of Title 28, Judiciary and Judicial Procedure.

Removal of a bankrupt, for whose apprehension a warrant has been issued, from one district to another, see section 28 of Title 11, Bankruptcy.

Warrant for removal of prisoner from one district to another, see section 3049 of this title.

Warrant of removal, see form 14.

Rule 41. Search and Seizure

(a) Authority to Issue Warrant

A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state court of record within the district wherein the property is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) Property Which May be Seized With a Warrant

A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) Issuance and Contents

A warrant shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(d) Execution and Return With Inventory

The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to Suppress

A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

(g) Return of Papers to Clerk

The federal magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(h) Scope and Definition

This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. The phrase "federal law enforcement officer" is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54(c), who is engaged

in the enforcement of the criminal laws and is within any category of officers authorized by the Attorney General to request the issuance of a search warrant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956; Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; Apr. 26, 1976, eff. Aug. 1, 1976.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a codification of existing law and practice.

Note to Subdivision (a)

This rule is a restatement of existing law, 18 U.S.C. former § 611.

Note to Subdivision (b)

This rule is a restatement of existing law, 18 U.S.C. former § 612; *Conyer* v. *United States*, 80 F. 2d 292, C. C. A. 6th. This provision does not supersede or repeal special statutory provisions permitting the issuance of search warrants in specific circumstances. See Subdivision (g) and Note thereto, infra.

Note to Subdivision (c)

This rule is a restatement of existing law, 18 U.S.C. former §§ 613–616, 620; *Dumbra* v. *United States*, 268 U.S. 435, 45 S. Ct. 546, 69 L. Ed. 1032.

Note to Subdivision (d)

This rule is a restatement of existing law, 18 U.S.C. former §§ 621–624.

Note to Subdivision (e)

This rule is a restatement of existing law and practice, with the exception hereafter noted, 18 U.S.C. former §§ 625, 626; *Weeks* v. *United States*, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652; *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385, 40 S. Ct. 182, 64 L. Ed. 319; *Agello* v. *United States*, 269 U.S. 20, 46 S. Ct. 4, 70 L. Ed. 145; *Gouled* v. *United States*, 255 U.S. 298, 41 S. Ct. 261, 65 L. Ed. 647. While under existing law a motion to suppress evidence or to compel return of property obtained by an illegal search and seizure may be made either before a commissioner subject to review by the court on motion, or before the court, the rule provides that such motion may be made only before the court. The purpose is to prevent multiplication of proceedings and to bring the matter before the court in the first instance. While during the life of the Eighteenth Amendment when such motions were numerous it was a common practice in some districts for commissioners to hear such motions, the prevailing practice at the present time is to make such motions before the district court. This practice, which is deemed to be preferable, is embodied in the rule.

Note to Subdivision (f)

This rule is a restatement of existing law, 18 U.S.C. former § 627; Cf. Rule 5(c) (last sentence).

Note to Subdivision (g)

While Rule 41 supersedes the general provisions of 18 U.S.C. former §§ 611–626 (now 18 U.S.C. §§ 3105, 3109), relating to search warrants, it does not supersede, but preserves, all other statutory provisions permitting searches and seizures in specific situations. Among such statutes are the following:

U.S.C. Title 18 former:

§ 287 [Rule 41] (Search warrant for suspected counterfeiture)

U.S.C. Title 19:

§ 1595 (Customs duties; searches and seizures)

U.S.C. Title 26 former:

§ 3117 [now § 5557] (Officers and agents authorized to investigate, issue search warrants, and prosecute for violations)

For statutes which incorporate by reference 18 U.S.C. former § 98, and therefore are now controlled by this rule, see, e. g.:

U.S.C. Title 18 former:

§ 12 (Subversive activities; undermining loyalty, discipline, or morale of armed forces; searches and seizures)

U.S.C. Title 26 former:

§ 3116 [now § 7302] (Forfeitures and seizures)

Statutory provision for a warrant for detention of war materials seized under certain circumstances is found in 22 U.S.C. § 402 [now § 401] (Seizure of war materials intended for unlawful export.)

Other statutes providing for searches and seizures or entry without warrants are the following:

U.S.C. Title 19:

§ 482 (Search of vehicles and persons)

U.S.C. Title 25 former:

§ 246 [now 18 U.S.C. § 3113] (Searches and seizures)

U.S.C. Title 26 former:

§ 3601 [now § 7606] (Entry of premises for examination of taxable objects)

U.S.C. Title 29:

§ 211 (Investigations, inspections, and records)

U.S.C. Title 49:

§ 781 (Unlawful use of vessels, vehicles, and aircrafts; contraband article defined)

§ 782 (Seizure and forfeiture)

§ 784 (Application of related laws)

1948 AMENDMENT

The amendment is to substitute proper reference to Title 18 in place of the repealed acts.

To eliminate reference to sections of the Act of June 15, 1917, c. 30, which have been repealed by the Act of June 25, 1948, c. 645, which enacted Title 18.

1972 AMENDMENT

Subdivision (a) is amended to provide that a search warrant may be issued only upon the request of a federal law enforcement officer or an attorney for the government. The phrase "federal law enforcement officer" is defined in subdivision (h) in a way which will allow the Attorney General to designate the category of officers who are authorized to make application for a search warrant. The phrase "attorney for the government" is defined in rule 54.

The title to subdivision (b) is changed to make it conform more accurately to the content of the subdivision. Subdivision (b) is also changed to modernize the language used to describe the property which may be seized with a lawfully issued search warrant and to take account of a recent Supreme Court decision (*Warden* v. *Haden*, 387 U.S. 294 (1967)) and recent congressional action (18 U.S.C. § 3103a) which authorize the issuance of a search warrant to search for items of solely evidential value. 18 U.S.C. § 3103a provides that "a warrant may be issued to search for and seize any property that constitutes evidence of a criminal offense. . . ."

Recent state legislation authorizes the issuance of a search warrant for evidence of crime. See, *e.g.*, Cal. Penal Code § 1524(4) (West Supp. 1968); Ill. Rev. Stat. ch. 38, § 108-3 (1965); LSA C. Cr. P. art. 161 (1967); N.Y. CPL § 690.10(4) (McKinney, 1971); Ore. Rev. Stat. § 141.010 (1969); Wis. Stat. § 968.13(2) (1969).

The general weight of recent text and law review comment has been in favor of allowing a search for evidence. 8 Wigmore, Evidence § 2184a. (McNaughton rev. 1961); Kamisar. The Wiretapping-Eavesdropping Problem: A professor's View, 44 Minn. L. Rev. 891 (1960); Kaplan, Search and Seizure: A No-Man's Land

in the Criminal Law, 49 Calif. L. Rev. 474 (1961); Comments: 66 Colum. L. Rev. 355 (1966), 45 N.C.L. Rev. 512 (1967), 20 U. Chi. L. Rev. 319 (1953).

There is no intention to limit the protection of the fifth amendment against compulsory self-incrimination, so items which are solely "testimonial" or "communicative" in nature might well be inadmissible on those grounds. *Schmerber* v. *California*, 384 U.S. 757 (1966). The court referred to the possible fifth amendment limitation in *Warden* v. *Hayden, supra:*

This case thus does not require that we consider whether there are items of evidential value whose very nature precludes them from being the object of a reasonable search and seizure. [387 U.S. at 303].

See ALI Model Code of Pre-Arraignment Procedure § 551.03(2) and commentary at pp. 3-5 (April 30, 1971).

It seems preferable to allow the fifth amendment limitation to develop as cases arise rather than attempt to articulate the constitutional doctrine as part of the rule itself.

The amendment to subdivision (c) is intended to make clear that a search warrant may properly be based upon a finding of probable cause based upon hearsay. That a search warrant may properly be issued on the basis of hearsay is current law. See, *e.g., Jones* v. *United States*, 362 U.S. 257 (1960); *Spinelli* v. *United States*, 393 U.S. 410 (1969). See also *State* v. *Beal*, 40 Wis. 2d 607, 162 N.W. 2d 640 (1968), reversing prior Wisconsin cases which held that a search warrant could not properly issue on the basis of hearsay evidence.

The provision in subdivision (c) that the magistrate may examine the affiant or witnesses under oath is intended to assure him an opportunity to make a careful decision as to whether there is probable cause. It seems desirable to do this as an incident to the issuance of the warrant rather than having the issue raised only later on a motion to suppress the evidence. See L. Tiffany, D. McIntyre, and D. Rotenberg, Detection of Crime 118 (1967). If testimony is taken it must be recorded, transcribed, and made part of the affidavit or affidavits. This is to insure an adequate basis for determining the sufficiency of the evidentiary grounds for the issuance of the search warrant if that question should later arise.

The requirement that the warrant itself state the grounds for its issuance and the names of any affiants, is eliminated as unnecessary paper work. There is no comparable requirement for an arrest warrant in rule 4. A person who wishes to challenge the validity of a search warrant has access to the affidavits upon which the warrant was issued.

The former requirement that the warrant require that the search be conducted "forthwith" is changed to read "within a specified period of time not to exceed 10 days." The former rule contained an inconsistency between subdivision (c) requiring that the search be conducted "forthwith" and subdivision (d) requiring execution "within 10 days after its date." The amendment resolves this ambiguity and confers discretion upon the issuing magistrate to specify the time within which the search may be conducted to meet the needs of the particular case.

The rule is also changed to allow the magistrate to authorize a search at a time other than "daytime," where there is "reasonable cause shown" for doing so. To make clear what "daytime" means, the term is defined in subdivision (h).

Subdivision (d) is amended to conform its language to the Federal Magistrates Act. The language "The warrant may be executed and returned only within 10 days after its date" is omitted as unnecessary. The matter is now covered adequately in proposed subdivision (c) which gives the issuing officer authority to fix the time within which the warrant is to be executed.

The amendment to subdivision (e) and the addition of subdivision (f) are intended to require the motion to suppress evidence to be made in the trial court rather than in the district in which the evidence was seized as now allowed by the rule. In *DiBella* v. *United States*, 369 U.S. 121 (1962), the court, in effect, discouraged motions to suppress in the district in which the property was seized:

There is a decision in the Second Circuit, *United States* v. *Klapholz*, 230 F. 2d 494 (1956), allowing the Government an appeal from an order granting a post-indictment motion to suppress, apparently for the single reason that the motion was filed in the district of seizure rather than of trial; but the case was soon thereafter taken by a District Court to have counseled declining jurisdiction of such motions for reasons persuasive against allowing the appeal: "This course will avoid a needless duplication of effort by two courts and provide a more expeditious resolution of the controversy besides avoiding the risk of determining prematurely and inadequately the admissibility of evidence at the trial. . . . A piecemeal adjudication such as that which would necessarily follow from a disposition of the motion here might conceivably result in prejudice either to the Government or the defendants, or both." *United States* v. *Lester*, 21 F.R.D. 30, 31 (D.C.S.D.N.Y. 1957). Rule 41(e), of course, specifically provides for making of the motion in the district of seizure On a summary hearing, however, the ruling there is likely always to be tentative. We think it accords most satisfactorily with sound administration of the Rules to treat such rulings as interlocutory. [369 U.S. at 132-133.]

As amended, subdivision (e) provides for a return of the property if (1) the person is entitled to lawful possession *and* (2) the seizure was illegal. This means that the judge in the district of seizure does not have to decide the legality of the seizure in cases involving contraband which, even if seized illegally, is not to be returned.

The five grounds for returning the property, presently listed in the rule, are dropped for two reasons—(1) substantive grounds for objecting to illegally obtained evidence (*e.g., Miranda*) are not ordinarily codified in the rules and (2) the categories are not entirely accurate. See *United States* v. *Howard*, 138 F. Supp. 376, 380 (D. Md. 1956).

A sentence is added to subdivision (e) to provide that a motion for return of property, made in the district of trial, shall be treated also as a motion to suppress under rule 12. This change is intended to further the objective of rule 12 which is to have all pretrial motions disposed of in a single court appearance rather than to have a series of pretrial motions made on different dates, causing undue delay in administration.

Subdivision (f) is new and reflects the position that it is best to have the motion to suppress made in the court of the district of trial rather than in the court of the district in which the seizure occurred. The motion to suppress in the district of trial should be made in accordance with the provisions of rule 12.

Subdivision (g) is changed to conform to subdivision (c) which requires the return to be made before a federal judicial officer even though the search warrant may have been issued by a nonfederal magistrate.

Subdivision (h) is former rule 41(g) with the addition of a definition of the term "daytime" and the phrase "federal law enforcement officer."

Effective Date of 1976 Amendment

Amendment of subd. (c)(1) by order of the United States Supreme Court of Apr. 26, 1976, effective Aug. 1, 1976, see section 1 of Pub. L. 94-349, set out as a note under section 3771 of this title.

Effective Date of 1956 Amendment

Amendment by Order of April 9, 1956, became effective 90 days thereafter.

Cross References

Assault on persons authorized to serve or execute warrant, see section 2231 of this title.

Conveyances carrying liquor, see section 3618 of this title.

Counterfeiting, seizure of paraphernalia, see section 492 of this title.

Deadly weapon, resistance with of person authorized to serve or execute warrant, see section 2231 of this title.

Destruction of property to prevent seizure, penalty, see section 2232 of this title.

Discovery and inspection of evidence obtained by seizure by defendant, see rule 16.

False representation as officer and search by impersonator, see section 913 of this title.

Federal Bureau of Investigation, service of warrants and seizures by, see section 3107 of this title.

Indian liquor traffic violation, see section 3113 of this title.

Intimidation or interference with person authorized to serve or execute warrant, see section 2231 of this title.

Intoxicating liquors, containers and vehicles used in violation of law, see section 3615 of this title.

Liquor law violations, remission or mitigation of forfeitures, see section 3617 of this title.

Motion for return of property and to suppress evidence, see form 16.

Officers and employees of government, searches without warrant, see section 2236 of this title.

Probable cause, procuring search warrant without, see section 2235 of this title.

Removal of property to prevent seizure, penalty, see section 2232 of this title.

Rescue of seized property, penalty, see section 2233 of this title.

Resistance to person authorized to serve or execute warrant, see section 2231 of this title.

Search warrant, see form 15.

Searches and seizures, see Const. Amend. 4.

Vessels as place of resort for persons conspiring to commit offense against United States, see section 2274 of this title.

Violation of laws of United States, authority to make seizures under warrants, see section 3107 of this title.

Warrants—

Breaking doors or windows to execute, see section 3109 of this title.

Offenses exceeding authority in executing, see section 2234 of this title.

Persons authorized to serve, see section 3105 of this title.

Procuring maliciously and without probable cause, see section 2235 of this title.

Search without, federal officer, agent or employee, see section 2236 of this title.

Wild animals or birds, transportation or importation in violation of law, execution, see section 3112 of this title.

Wire or oral communications, authorization for interception, to provide evidence of certain offenses, see section 2516 of this title.

Rule 42. Criminal Contempt

(a) Summary Disposition

A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing

A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

NOTES OF ADVISORY COMMITTEE ON RULES

The rule-making power of the Supreme Court with respect to criminal proceedings was extended to proceedings to punish for criminal contempt of court by the Act of November 21, 1941 (55 Stat. 779), 18 U.S.C. former § 689 (now §§ 3771, 3772).

Note to Subdivision (a)

This rule is substantially a restatement of existing law, *Ex parte Terry*, 128 U.S. 289; *Cooke* v. *United States*, 267 U.S. 517, 534, 45 S. Ct. 390, 69 L. Ed. 767.

Note to Subdivision (b)

This rule is substantially a restatement of the procedure prescribed in 28 U.S.C. former §§ 386–390 (now 18 U.S.C. §§ 401, 402, 3285, 3691), and 29 U.S.C. former § 111 (now 18 U.S.C. § 3692).

2. The requirement in the second sentence that the notice shall describe the criminal contempt as such is intended to obviate the frequent confusion between criminal and civil contempt proceedings and follows the suggestion made in *McCann* v. *New York Stock Exchange*, 80 F.2d 211, C.C.A. 2d. See also *Nye* v. *United States*, 313 U.S. 33, 42–43, 61 S.Ct. 810, 85 L.Ed. 1172.

3. The fourth sentence relating to trial by jury preserves the right to a trial by jury in those contempt cases in which it is granted by statute, but does not enlarge the right or extend it to additional cases. The respondent in a contempt proceeding may demand a trial by jury as of right if the proceeding is brought under the Act of March 23, 1932, ch. 90, sec. 11, 47 Stat. 72, 29 U.S.C. former § 111 (now 18 U.S.C. § 3692) (Norris-La Guardia Act), or the Act of October 15, 1914, ch. 323, sec. 22, 38 Stat. 738, 28 U.S.C. § 387 (Clayton Act).

4. The provision in the sixth sentence disqualifying the judge affected by the contempt if the charge involves disrespect to or criticism of him, is based, in part, on 29 U.S.C. former § 112 (Contempts; demand for retirement of judge sitting in proceeding) and the observations of Chief Justice Taft in *Cooke* v. *United States*, 267 U.S. 517, 539, 45 S. Ct. 390, 69 L. Ed. 767.

5. Among the statutory provisions defining criminal contempts are the following:

U.S.C. Title 7:

§ 499m (Perishable Agricultural Commodities Act; investigation of complaints; procedure; penalties; etc.—(c) Disobedience to subpenas; remedy; contempt)

U.S.C. Title 9:

§ 7 (Witnesses before arbitrators; fees, compelling attendance)

U.S.C. Title 11:

§ 69 (Referees; contempts before)

U.S.C. Title 15:

§ 49 (Federal Trade Commission; documentary evidence; depositions; witnesses)

§ 78u (Regulation of Securities Exchanges; investigation; injunctions and prosecution of offenses)

§ 100 (Trademarks; destruction of infringing labels; service of injunction, and proceedings for enforcement)

§ 155 (China Trade Act; authority of registrar in obtaining evidence)

U.S.C. Title 17 former:

§ 36 [now § 112] (Injunctions; service and enforcement)

U.S.C. Title 19:

§ 1333 (Tariff Commission; testimony and production of papers—(b) Witnesses and evidence)

U.S.C. Title 22 former:

§ 270f (International Bureaus; Congresses, etc.; perjury; contempts; penalties)

U.S.C. Title 28 former:

§ 385 [now § 459; 18 U.S.C. § 401] (Administration of oaths; contempts)

§ 386 [now 18 U.S.C. §§ 402, 3691] (Contempts; when constituting also criminal offense)

§ 387 [now 18 U.S.C. § 402] (Same; procedure; bail; attachment; trial; punishment) (Clayton Act; jury trial; section)

§ 388 (Same; review of conviction)

§ 389 [now 18 U.S.C. §§ 402, 3691] (Same; not specifically enumerated)

§ 390 [now 18 U.S.C. § 3285] (Same; limitations)

§ 390a [now 18 U.S.C. § 402] ("Person" or "persons" defined)

§ 648 [now 18 U.S.C., Appendix R. 17(f); 28 U.S.C., Appendix, R. 45(d)] (Depositions under dedimus potestatem; witnesses; when required to attend)

§ 703 (Punishment of witness for contempt)

§ 714 [now § 1784] (Failure of witness to obey subpena; order to show cause in contempt proceedings)

§ 715 [now § 1784] (Direction in order to show cause for seizure of property of witness in contempt)

§ 716 [now § 1784] (Service of order to show cause)

§ 717 [now § 1784] (Hearing on order to show cause; judgment; satisfaction)

§ 750 [now § 2405] (Garnishees in suits by United States against a corporation; garnishee failing to appear)

U.S.C. Title 29 former:

§ 111 [now 18 U.S.C. § 3692] (Contempts; speedy and public trial; jury) (Norris-La Guardia Act)

§ 112 [now 18 U.S.C., Appendix, R. 42] (Contempts; demands for retirement of judge sitting in proceeding)

§ 160 (Prevention of unfair labor practices—(h) Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of Title 29)

§ 161 (Investigatory powers of Board—(2) Court aid in compelling production of evidence and attendance of witnesses)

§ 209 (Fair Labor Standards Act; attendance of witnesses)

U.S.C. Title 33:

§ 927 (Longshoremen's and Harbor Workers' Compensation Act; powers of deputy commissioner)

U.S.C. Title 35 former:

§ 56 [now § 24] (Failing to attend or testify)

U.S.C. Title 47:

§ 409 (Federal Communications Commission; hearing; subpenas; oaths; witnesses; production of books and papers; contempts; depositions; penalties)

U.S.C. Title 48 former:

§ 1345a (Canal Zone; general jurisdiction of district court; issue of process at request of officials; witnesses; contempt)

U.S.C. Title 49:

§ 12 (Interstate Commerce Commission; authority and duties of commission; witnesses; depositions—(3) Compelling attendance and testimony of witnesses, etc.)

TAFT-HARTLEY INJUNCTIONS

Former section 112 of Title 29, Labor, upon which subd. (b) of this rule is in part based, as inapplicable to injunctions issued under the Taft-Hartley Act, see section 178 of said Title 29.

CROSS REFERENCES

Admission to bail, see rule 46.

Criminal contempt constituting an offense, see section 402 of this title.

Jury trial—

For contempt in labor dispute cases, see section 3692 of this title.

Of criminal contempt constituting an offense, see section 3691 of this title.

Power of court to punish for criminal contempt, see section 401 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 45 (Subpena) subdivision (f) (Contempt).

RULE REFERRED TO IN U.S. CODE

This rule is referred to in title 15 section 1267.

X. GENERAL PROVISIONS

Rule 43. Presence of the Defendant

(a) Presence Required

The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required

The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived his right to be present whenever a defendant, initially present,

(1) voluntarily absents himself after the trial has commenced (whether or not he has been informed by the court of his obligation to remain during the trial), or

(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required

A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub. L. 94-64, § 3(35), 89 Stat. 376.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. The first sentence of the rule setting forth the necessity of the defendant's presence at arraignment and trial is a restatement of existing law, *Lewis* v. *United States*, 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011; *Diaz* v. *United States*, 223 U.S. 442, 455, 32 S.Ct. 250, 56 L.Ed. 500, Ann. Cas. 1913C 1138. This principle does not apply to hearings on motions made prior to or after trial, *United States* v. *Lynch*, 132 F.2d 111, C.C.A. 3d.

2. The second sentence of the rule is a restatement of existing law that, except in capital cases, the defendant may not defeat the proceedings by voluntarily absenting himself after the trial has been commenced in his presence, *Diaz* v. *United States*, 223 U.S. 442, 455, 32 S.Ct. 250, 56 L.Ed. 500, Ann. Cas. 1913C 1138; *United States* v. *Noble*, 294 Fed. 689 (D. Mont.)—affirmed, 300 Fed. 689, C.C.A. 9th; *United States* v. *Barracota*, 45 F.Supp. 38, S.D.N.Y.; *United States* v. *Vassalo*, 52 F.2d 699, E. D. Mich.

3. The fourth sentence of the rule empowering the court in its discretion, with the defendant's written consent, to conduct proceedings in misdemeanor cases in defendant's absence adopts a practice prevailing in some districts comprising very large areas. In such districts appearance in court may require considerable travel, resulting in expense and hardship not commensurate with the gravity of the charge, if a minor infraction is involved and a small fine is eventually imposed. The rule, which is in the interest of defendants in such situations, leaves it discretionary with the court to permit defendants in misdemeanor cases to absent themselves and, if so, to determine in what types of misdemeanors and to what extent. Similar provisions are found in the statutes of a number of States. See A.L.I. Code of Criminal Procedure, pp. 881-882.

4. The purpose of the last sentence of the rule is to resolve a doubt that at times has arisen as to whether it is necessary to bring the defendant to court from an institution in which he is confined, possibly at a distant point, if the court determines to reduce the sentence previously imposed. It seems in the interest of both the Government and the defendant not to require such presence, because of the delay and expense that are involved.

1974 AMENDMENT

The revision of rule 43 is designed to reflect *Illinois* v. *Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed. 2d 353 (1970). In *Allen*, the court held that "there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly." 397 U.S. at 343-344, 90 S.Ct. 1057.

Since rule 43 formerly limited trial in absentia to situations in which there is a "voluntary absence after the trial has been commenced," it could be read as precluding a federal judge from exercising the third option held to be constitutionally permissible in *Allen*. The amendment is designed to make clear that the judge does have the power to exclude the defendant from the courtroom when the circumstances warrant such action.

The decision in *Allen*, makes no attempt to spell out standards to guide a judge in selecting the appropriate method to ensure decorum in the courtroom and there is no attempt to do so in the revision of the rule.

The concurring opinion of Mr. Justice Brennan stresses that the trial judge should make a reasonable effort to enable an excluded defendant "to communicate with his attorney and, if possible, to keep apprised of the progress of the trial." 397 U.S. at 351, 90 S.Ct. 1057. The Federal Judicial Center is presently engaged in experimenting with closed circuit television in courtrooms. The experience gained from these experiments may make closed circuit television readily available in federal courtrooms through which an excluded defendant would be able to hear and observe the trial.

The defendant's right to be present during the trial on a capital offense has been said to be so fundamental that it may not be waived. *Diaz* v. *United States*, 223 U.S. 442, 455, 32 S.Ct. 250, 56 L.Ed. 500 (1912) (dictum); *Near* v. *Cunningham*, 313 F.2d 929, 931 (4th Cir. 1963); C. Wright, Federal Practice and Procedure: Criminal § 723 at 199 (1969, Supp.1971).

However, in *Illinois* v. *Allen*, *supra* the court's opinion suggests that sanctions such as contempt may be least effective where the defendant is ultimately facing a far more serious sanction such as the death penalty. 397 U.S. at 345, 90 S.Ct. 1057. The ultimate determination of when a defendant can waive his right to be present in a capital case (assuming a death penalty provision is held constitutional, see *Furman* v. *Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)) is left for further clarification by the courts.

Subdivision (b)(1) makes clear that voluntary absence may constitute a waiver even if the defendant has not been informed by the court of his obligation to remain during the trial. Of course, proof of voluntary absence will require a showing that the defendant knew of the fact that the trial or other proceeding was going on. C. Wright, Federal Practice and Procedure: Criminal § 723 n. 35 (1969). But it is unnecessary to show that he was specifically warned of his obligation to be present; a warning seldom is thought necessary in current practice. [See *Taylor* v. *United States*, 414 U.S. 17, 94 S.Ct. 194, 38 L.Ed.2d 174 (1973).]

Subdivision (c)(3) makes clear that the defendant need not be present at a conference held by the court and counsel where the subject of the conference is an issue of law.

The other changes in the rule are editorial in nature. In the last phrase of the first sentence, "these rules" is changed to read "this rule," because there are no references in any of the other rules to situations where the defendant is not required to be present. The phrase "at the time of the plea," is added to subdivision (a) to make perfectly clear that defendant must be present at the time of the plea. See rule 11(c)(5) which provides that the judge may set a time, other than arraignment, for the holding of a plea agreement procedure.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94-247

A. Amendments Proposed by the Supreme Court. Rule 43 of the Federal Rules of Criminal Procedure deals with the presence of the defendant during the proceedings against him. It presently permits a defendant to be tried in absentia only in non-capital cases where the defendant has voluntarily absented himself after the trial has begun.

The Supreme Court amendments provide that a defendant has waived his right to be present at the trial of a capital or noncapital case in two circumstances: (1) when he voluntarily absents himself after the trial has begun; and (2) where he "engages in conduct which is such as to justify his being excluded from the courtroom."

B. Committee Action. The Committee added language to subdivision (b)(2), which deals with excluding a disruptive defendant from the courtroom. The Advisory Committee Note indicates that the rule proposed by the Supreme Court was drafted to reflect the decision in *Illinois* v. *Allen*, 397 U.S. 337 (1970). The Committee found that subdivision (b)(2) as proposed did not full track the *Allen* decision. Consequently, language was added to that subsection to require the court to warn a disruptive defendant before excluding him from the courtroom.

EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974; EFFECTIVE DATE OF 1975 AMENDMENTS

Amendments of this rule embraced in the order of the United States Supreme Court on Apr. 22, 1974 and the amendments of this rule made by section 3 of Pub. L. 94-64, effective Dec. 1, 1975, see section 2 of Pub. L. 94-64, set out as a note under rule 4 of these rules.

CROSS REFERENCES

Arraignment, see rule 10.
Correction or reduction of sentence, see rule 35.
Impaneling of jury, see sections 1861 et seq. of Title 28, Judiciary and Judicial Procedure.
Motion for new trial, see rule 33.
Motions prior to trial, see rules 6 and 12.
Pleas, see rule 11.
Sentence, see rule 32.

Rule 44. Right to and Assignment of Counsel

(a) Right to Assigned Counsel

Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the federal magistrate or the court through appeal, unless he waives such appointment.

(b) Assignment Procedure

The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by local rules of court established pursuant thereto.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule is a restatement of existing law in regard to the defendant's constitutional right of counsel as defined in recent judicial decisions. The Sixth Amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense."

28 U.S.C. former § 394 (now § 1654) provides:

"In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein."

18 U.S.C. former § 563 (now § 3005), which is derived from the act of April 30, 1790 (1 Stat. 118), provides:

"Every person who is indicted of treason or other capital crime, shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all seasonable hours."

The present extent of the right of counsel has been defined recently in *Johnson* v. *Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461; *Walker* v. *Johnston*, 312 U.S. 275, 61 S. Ct. 574, 85 L. Ed. 830; and *Glasser* v. *United States*, 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680, rehearing denied 315 U.S. 827, 62 S. Ct. 629, 637, two cases, 86 L. Ed. 1222. The rule is a restatement of the principles enunciated in these decisions. See, also, Holtzoff, 20 N.Y.U.L.Q.R. 1.

2. The rule is intended to indicate that the right of the defendant to have counsel assigned by the court relates only to proceedings in court and, therefore, does not include preliminary proceedings before a committing magistrate. Although the defendant is not entitled to have counsel assigned to him in connection with preliminary proceedings, he is entitled to be represented by counsel retained by him, if he so chooses, Rule 5(b) (Proceedings before the Commissioner; Statement by the Commissioner) and Rule 40(b)(2) (Commitment to Another District; Removal—Arrest in Distant District—Statement by Commissioner or Judge). As to defendant's right of counsel in connection with the taking of depositions, see Rule 15(c) (Depositions—Defendant's Counsel and Payment of Expenses).

1966 AMENDMENT

A new rule is provided as a substitute for the old to provide for the assignment of counsel to defendants unable to obtain counsel during all stages of the proceeding. The Supreme Court has recently made clear the importance of providing counsel both at the earliest possible time after arrest and on appeal. See *Crooker* v. *California*, 357 U.S. 433 (1958); *Cicenia* v. *LaGay*, 357 U.S. 504 (1958); *White* v. *Maryland*, 373 U.S. 59 (1963); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Douglas* v. *California*, 372 U.S. 353 (1963). See also Association of the Bar of the City of New York, Special Committee to Study the Defender System, Equal Justice for the Accused (1959); Report of the Attorney General's Committee on Poverty and the Administration of Justice (1963); Beaney, Right to Counsel Before Arraignment, 45 Minn. L. Rev. 771 (1961); Boskey, The Right to Counsel in Appellate Proceedings, 45 Minn. L. Rev. 783 (1961); Douglas, The Right to Counsel—A Foreword, 45 Minn. L. Rev. 693 (1961); Kamisar, The Right to Counsel and the Fourteenth Amendment; A Dialogue on "The Most Pervasive Right" of an Accused, 30 U. Chi. L. Rev. 1 (1962); Kamisar, Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values, 61 Mich. L. Rev. 219 (1962); Symposium, The Right to Counsel, 22 Legal Aid Briefcase 4-48 (1963). Provision has been made by law for a Legal Aid Agency in the District of Columbia which is charged with the duty of providing counsel and courts are admonished to assign such counsel "as early in the proceeding as practicable." D.C. Code § 2-2202. Congress has now made provision for assignment of counsel and their compensation in all of the districts. Criminal Justice Act of 1964 (78 Stat. 552).

Like the original rule the amended rule provides a right to counsel which is broader in two respects than that for which compensation is provided in the Criminal Justice Act of 1964: (1) the right extends to petty offenses to be tried in the district courts, and (2) the right extends to defendants unable to obtain counsel for reasons other than financial. These rules do not cover procedures other than those in the courts of the United States and before United States commissioners. See Rule 1. Hence, the problems relating to the providing of counsel prior to the initial appearance before a court or commissioner are not dealt with in this rule. Cf. *Escobedo* v. *United States*, 378 U.S. 478 (1964); Enker and Elsen, Counsel for the Suspect: *Massiah* v. *United States* and *Escobedo* v. *Illinois*, 49 Minn. L. Rev. 47 (1964).

Subdivision (a).—This subdivision expresses the right of the defendant unable to obtain counsel to have such counsel assigned at any stage of the proceedings from his initial appearance before the commissioner or court through the appeal, unless he waives such right. The phrase "from his initial appearance before the commissioner or court" is intended to require the assignment of counsel as promptly as possible after it appears that the defendant is unable to obtain counsel. The right to assignment of counsel is not limited to those financially unable to obtain counsel. If a defendant is able to compensate counsel but still cannot obtain counsel, he is entitled to the assignment of counsel even though not to free counsel.

Subdivision (b).—This new subdivision reflects the adoption of the Criminal Justice Act of 1964. See Report of the Judicial Conference of the United States on the Criminal Justice Act of 1964, 36 F.R.D. 277 (1964).

1972 AMENDMENT

Subdivision (a) is amended to reflect the Federal Magistrates Act of 1968. The phrase "federal magistrate" is defined in rule 54.

CROSS REFERENCES

Appearance personally or by counsel, see section 1654 of Title 28, Judiciary and Judicial Procedure.

Arrest in distant district, informing defendant of right to retain counsel, see rule 40.

Assignment of counsel in treason or other capital offenses, see section 3005 of this title.

Assistance of counsel, see Const. Amend. VI.

Magistrate to inform defendant of right to retain counsel in preliminary examination, see rule 5.

Rule 45. Time

(a) Computation

In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35, except to the extent and under the conditions stated in them.

(c) Rescinded. Feb. 28, 1966, eff. July 1, 1966

(d) For Motions; Affidavits

A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time After Service by Mail

Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

NOTES OF ADVISORY COMMITTEE ON RULES

The rule is in substance the same as Rule 6 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. It seems desirable that matters covered by this rule should be regulated in the same manner for civil and criminal cases, in order to preclude possibility of confusion.

Note to Subdivision (a)

This rule supersedes the method of computing time prescribed by Rule 13 of the Criminal Appeals Rules, promulgated on May 7, 1934, 292 U.S. 661.

Note to Subdivision (c)

This rule abolishes the expiration of a term of court as a time limitation for the taking of any step in a criminal proceeding, as is done for civil cases by Rule 6(c) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. In view of the fact that the duration of terms of court varies among the several districts and the further fact that the length of time for the taking of any step limited by a term of court depends on the stage within the term when the time begins to run, specific time limitations have been substituted for the taking of any step which previously had to be taken within the term of court.

Note to Subdivision (d)

Cf. Rule 47 (Motions) and Rule 49 (Service and filing of papers).

1966 AMENDMENT

Subdivision (a).—This amendment conforms the subdivision with the amendments made effective on July 1, 1963, to the comparable provision in Civil Rule 6(a). The only major change is to treat Saturdays as legal holidays for the purpose of computing time.

Subdivision (b).—The amendment conforms the subdivision to the amendments made effective in 1948 to the comparable provision in Civil Rule 6(b). One of these conforming changes, substituting the words "extend the time" for the words "enlarge the period" clarifies the ambiguity which gave rise to the decision in *United States* v. *Robinson*, 361 U.S. 220 (1960). The amendment also, in connection with the amendments to Rules 29 and 37, makes it clear that the only circumstances under which extensions can be granted under Rules 29, 33, 34, 35, 37(a)(2) and 39(c) are those stated in them.

Subdivision (c).—Subdivision (c) of Rule 45 is rescinded as unnecessary in view of the 1963 amendment to 28 U.S.C. § 138 eliminating terms of court.

1968 AMENDMENT

The amendment eliminates inappropriate references to Rules 37 and 39 which are to be abrogated.

1971 AMENDMENT

The amendment adds Columbus Day to the list of legal holidays to conform the subdivision to the Act of June 28, 1968, 82 Stat. 250, which constituted Columbus Day a legal holiday effective after January 1, 1971.

The Act, which amended Title 5, U.S.C., § 6103(a), changes the day on which certain holidays are to be observed. Washington's Birthday, Memorial Day and Veterans Day are to be observed on the third Monday in February, the last Monday in May and the fourth Monday in October, respectively, rather than, as heretofore, on February 22, May 30, and November 11, respectively. Columbus Day is to be observed on the second Monday in October. New Year's Day, Independence Day, Thanksgiving Day and Christmas continue to be observed on the traditional days.

CROSS REFERENCES

Motions generally, see rule 47.

Service and filing of papers, see rule 49.

FEDERAL RULES OF CIVIL PROCEDURE

Additional time after service by mail, see rule 6, Title 28, Appendix, Judiciary and Judicial Procedure.
Computation of time, see rule 6.
Enlargement of time, see rule 6.
Time for motions and affidavits, see rule 6.

Rule 46. Release From Custody

(a) Release Prior to Trial

Eligibility for release prior to trial shall be in accordance with 18 U.S.C. § 3146, § 3148, or § 3149.

(b) Release During Trial

A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Pending Sentence and Notice of Appeal

Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U.S.C. § 3148. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) Justification of Sureties

Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture

(1) *Declaration.* If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail.

(2) *Setting aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration

When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of Detention Pending Trial

The court shall exercise supervision over the detention of defendants and witnesses within the district pending trial for the purpose of eliminating all unnecessary detention. The attorney for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending indictment, arraignment or trial for a period in excess of ten days. As to each witness so listed the attorney for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the government shall make a statement of the reasons why the defendant is still held in custody.

(As amended Apr. 9, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)(1)

This rule is substantially a restatement of existing law, 18 U.S.C. former §§ 596, 597 (now § 3141).

Note to Subdivision (a)(2)

This rule is substantially a restatement of Rule 6 of Criminal Appeals Rules, with the addition of a reference to bail pending certiorari. This rule does not supersede 18 U.S.C. former § 682 (now § 3731) (Appeals; on behalf of the United States; rules of practice and procedure), which provides for the admission of the defendant to bail on his own recognizance pending an appeal taken by the Government.

Note to Subdivision (b)

This rule is substantially a restatement of existing law, 28 U.S.C. former § 657.

Note to Subdivision (d)

This rule is a restatement of existing practice, and is based in part on 6 U.S.C. § 15 (Bonds or notes of United States in lieu of recognizance, stipulation, bond, guaranty, or undertaking; place of deposit; return to depositor; contractors' bonds).

Note to Subdivision (e)

This rule is similar to Sec. 79 of A.L.I. Code of Criminal Procedure introducing, however, an element of flexibility. Corporate sureties are regulated by 6 U.S.C. §§ 6–14.

Note to Subdivision (f)

1. With the exception hereafter noted, this rule is substantially a restatement of existing law in somewhat greater detail than contained in 18 U.S.C. former § 601 (Remission of penalty of recognizance).

2. Subdivision (f)(2) changes existing law in that it increases the discretion of the court to set aside a forfeiture. The power of the court under 18 U.S.C. former § 601 was limited to cases in which the defendant's default had not been willful.

3. The second sentence of paragraph (3) is similar to Rule 43(f) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. This paragraph also substitutes simple motion procedure for enforcing forfeited bail

bonds for the procedure by scire facias, which was abolished by Rule 81(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (g)

This rule is a restatement of existing law and practice. It is based in part on 18 U.S.C. former § 599 (now § 3142) (Surrender by bail).

1966 AMENDMENT

Subdivision (c).—The more inclusive word "terms" is substituted for "amount" in view of the amendment to subdivision (d) authorizing releases without security on such conditions as are necessary to insure the appearance of the defendant. The phrase added at the end of this subdivision is designed to encourage commissioners and judges to set the terms of bail so as to eliminate unnecessary detention. See *Stack* v. *Boyle*, 342 U.S. 1 (1951); *Bandy* v. *United States*, 81 S. Ct. 197 (1960); *Bandy* v. *United States*, 82 S. Ct. 11 (1961); *Carbo* v. *United States*, 82 S. Ct. 662 (1962); review den. 369 U.S. 868 (1962).

Subdivision (d).—The amendments are designed to make possible (and to encourage) the release on bail of a greater percentage of indigent defendants than now are released. To the extent that other considerations make it reasonably likely that the defendant will appear it is both good practice and good economics to release him on bail even though he cannot arrange for cash or bonds in even small amounts. In fact it has been suggested that it may be a denial of constitutional rights to hold indigent prisoners in custody for no other reason than their inability to raise the money for a bond. *Bandy* v. *United States*, 81 S. Ct. 197 (1960).

The first change authorizes the acceptance as security of a deposit of cash or government securities in an amount less than the face amount of the bond. Since a defendant typically purchases a bail bond for a cash payment of a certain percentage of the face of the bond, a direct deposit with the court of that amount (returnable to the defendant upon his appearance) will often be equally adequate as a deterrent to flight. Cf. Ill. Code Crim. Proc. § 110-7 (1963).

The second change authorizes the release of the defendant without financial security on his written agreement to appear when other deterrents appear reasonably adequate. See the discussion of such deterrents in *Bandy* v. *United States*, 81 S. Ct. 197 (1960). It also permits the imposition of nonfinancial conditions as the price of dispensing with security for the bond. Such conditions are commonly used in England. Devin, The Criminal Prosecution in England, 89 (1958). See the suggestion in Note, Bail: An Ancient Practice Reexamined, 70 Yale L. J. 966, 975 (1961) that such conditions "* * * might include release in custody of a third party, such as the accused's employer, minister, attorney, or a private organization; release subject to a duty to report periodically to the court or other public official; or even release subject to a duty to return to jail each night." Willful failure to appear after forfeiture of bail is a separate criminal offense and hence an added deterrent to flight. 18 U.S.C. § 3146.

For full discussion and general approval of the changes made here see Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice 58–89 (1963).

Subdivision (h).—The purpose of this new subdivision is to place upon the court in each district the responsibility for supervising the detention of defendants and witnesses and for eliminating all unnecessary detention. The device of the report by the attorney for the government is used because in many districts defendants will be held in custody in places where the court sits only at infrequent intervals and hence they cannot be brought personally before the court without substantial delay. The magnitude of the problem is suggested by the facts that during the fiscal year ending June 30, 1960, there were 23,811 instances in which persons were held in custody pending trial and that the average length of detention prior to disposition (i.e., dismissal, acquittal, probation, sentence to imprisonment, or any other method of removing the case from the court docket) was 25.3 days. Federal Prisons 1960, table 22, p. 60. Since 27,645 of the 38,855 defendants whose cases were terminated during the fiscal year ending June 30, 1960, pleaded guilty (United States Attorneys Statistical Report, October 1960, p. 1 and table 2), it would appear that the greater part of the detention reported occurs prior to the initial appearance of the defendant before the court.

1972 AMENDMENT

The amendments are intended primarily to bring rule 46 into general conformity with the Bail Reform Act of 1966 and to deal in the rule with some issues not now included within the rule.

Subdivision (a) makes explicit that the Bail Reform Act of 1966 controls release on bail prior to trial. 18 U.S.C. § 3146 refers to release of a defendant. 18 U.S.C. § 3149 refers to release of a material witness.

Subdivision (b) deals with an issue not dealt with by the Bail Reform Act of 1966 or explicitly in former rule 46, that is, the issue of bail during trial. The rule gives the trial judge discretion to continue the prior conditions of release or to impose such additional conditions as are adequate to insure presence at trial or to insure that his conduct will not obstruct the orderly and expeditious progress of the trial.

Subdivision (c) provides for release during the period between a conviction and sentencing and for the giving of a notice of appeal or of the expiration of the time allowed for filing notice of appeal. There are situations in which defense counsel may informally indicate an intention to appeal but not actually give notice of appeal for several days. To deal with this situation the rule makes clear that the district court has authority to release under the terms of 18 U.S.C. § 3148 pending notice of appeal (*e.g.*, during the ten days after entry of judgment; see rule 4(b) of the Rules of Appellate Procedure). After the filing of notice of appeal, release by the district court shall be in accordance with the provisions of rule 9(b) of the Rules of Appellate Procedure. The burden of establishing that grounds for release exist is placed upon the defendant in the view that the fact of conviction justifies retention in custody in situations where doubt exists as to whether a defendant can be safely released pending either sentence or the giving of notice of appeal.

Subdivisions (d), (e), (f), and (g) remain unchanged. They were formerly lettered (e), (f), (g), and (h).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by Order of April 9, 1956, became effective 90 days thereafter.

CROSS REFERENCES

Admission to bail—
- Criminal contempt, see rule 42.
- Extraterritorial jurisdiction of United States, see section 3042 of this title.
- Juvenile delinquents, see section 5035 of this title.
- Power of courts and magistrates, see sections 3041 and 3141 of this title.
- Procedure after verdict, rules of practice made by Supreme Court as prescribing conditions for granting bail, see section 3772 of this title.
- Removal, admission by magistrate or judge, see rule 40.
- Removal, admission for appearance in the district in which prosecution is pending following issuance of warrant of removal, see rule 40.

Amount of bail—
- Additional bail, see section 3143 of this title.
- Continuance or alteration of bail pending sentence, see rule 46.
- Excessive bail shall not be required, see Const. Amend. 8.
- Form of warrant upon indictment or information, endorsement on warrant of amount of bail fixed by court, see rule 9.

Appeal—
Admission to bail upon appeal by and on behalf of United States, see section 3731 of this title.
Stay of sentence of imprisonment, see rule 38.
Appearance bond, see form 17.
Continuation of bail after granting motion to dismiss for defects in institution of prosecution or in indictment or information, pending filing of new indictment or information, see rule 12.
Grand jury, secrecy of indictment until bail is given, see rule 6.
Obstructing justice by false bail, see section 1506 of this title.
Penal bonds—
Bonds or notes of United States in lieu of recognizance, stipulation, bond, guaranty, or undertaking, see section 15 of Title 6, Surety Bonds.
Surety companies as sureties, see sections 6 to 13 of Title 6.
Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.
Refund of forfeited bail in criminal actions, availability of appropriations, see section 725q–2 of Title 31, Money and Finance.
State court criminal proceedings, bond on removal to Supreme Court, see section 3144 of this title.
Surrender by bail, see section 3142 of this title.
Transfer of proceedings from district or division for trial, transmission of bail, see rule 21.
Witnesses—
Appearance in criminal case, return to clerk of court, see section 3041 of this title.
Direction for taking deposition when committed for failure to give bail to appear to testify at trial or hearing, see rule 15.

Rule 47. Motions

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Notes of Advisory Committee on Rules

1. This rule is substantially the same as the corresponding civil rule (first sentence of Rule 7(b)(1), Federal Rules of Civil Procedure), 28 U.S.C., Appendix, except that it authorizes the court to permit motions to be made orally and does not require that the grounds upon which a motion is made shall be stated "with particularity," as is the case with the civil rule.

2. This rule is intended to state general requirements for all motions. For particular provisions applying to specific motions, see Rules 6(b)(2), 12, 14, 15, 16, 17(b) and (c), 21, 22, 29 and Rule 41(e). See also Rule 49.

3. The last sentence providing that a motion may be supported by affidavit is not intended to permit "speaking motions" (e.g. motion to dismiss an indictment for insufficiency supported by affidavits), but to authorize the use of affidavits when affidavits are appropriate to establish a fact (e.g. authority to take a deposition or former jeopardy).

Cross References

Motion for order—
Arrest of judgment, see rule 34.
Consolidation of indictments and informations, see rule 13.
Correct or reduce sentence, see rule 35.
Dismiss, see rules 6, 12, and 48.
Enforcement of surety liability, see rule 46.
Enlargement of time, see rule 45.
Inspect and copy seized evidence, see rule 16.
New trial, see rule 33.
Notice of hearing, see rule 45.
Quash or modify subpoena, see rule 17.
Return of property and suppress evidence, see rule 41.
Separate trial, see rule 14.
Severance, see rule 14.
Transfer of proceedings from district or division for trial, see rule 21.
Time for—
Making motion raising defenses and objections before trial, see rule 12.
Motion to transfer proceedings, see rule 22.

Federal Rules of Civil Procedure

Affidavits on motions, see rules 6 and 43, Title 28, Appendix, Judiciary and Judicial Procedure.
Motion day, see rule 78.
Notice of motion, see rules 6 and 7.

Rule 48. Dismissal

(a) By Attorney for Government

The Attorney General or the United States attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By Court

If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

Notes of Advisory Committee on Rules

Note to Subdivision (a)

1. The first sentence of this rule will change existing law. The common-law rule that the public prosecutor may enter a nolle prosequi in his discretion, without any action by the court, prevails in the Federal courts, *Confiscation Cases*, 7 Wall. 454, 457; *United States* v. *Woody*, 2 F.2d 262 (D. Mont.). This provision will permit the filing of a nolle prosequi only by leave of court. This is similar to the rule now prevailing in many States. A.L.I. Code of Criminal Procedure, Commentaries, pp. 895–897.

2. The rule confers the power to file a dismissal by leave of court on the Attorney General, as well as on the United States attorney, since under existing law the Attorney General exercises "general superintendence and direction" over the United States attorneys "as to the manner of discharging their respective duties," 5 U.S.C. former § 317 (now 28 U.S.C. §§ 507, 547). Moreover it is the administrative practice for the Attorney General to supervise the filing of a nolle prosequi by United States attorneys. Consequently it seemed appropriate that the Attorney General should have such power directly.

3. The rule permits the filing of a dismissal of an indictment, information or complaint. The word "complaint" was included in order to resolve a doubt prevailing in some districts as to whether the United States attorney may file a nolle prosequi between the time when the defendant is bound over by the United States commissioner and the finding of an indictment. It has been assumed in a few districts that the power does not exist and that the United States attorney must await action of the grand jury, even if he deems it proper to dismiss the prosecution. This situation is an unnecessary hardship to some defendants.

4. The second sentence is a restatement of existing law, *Confiscation Cases*, 7 Wall. 454–457; *United States* v. *Shoemaker*, 27 Fed. Cases No. 16,279, C.C.Ill. If the trial has commenced, the defendant has a right to insist on a disposition on the merits and may properly object to the entry of a nolle prosequi.

Note to Subdivision (b)

This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. *Ex parte Altman,* 34 F.Supp. 106, S.D.Cal.

FEDERAL RULES OF CIVIL PROCEDURE

Dismissal for failure to prosecute by the plaintiff, see rule 41, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 49. Service and Filing of Papers

(a) Service: When Required

Written motions other than those which are heard *ex parte,* written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made

Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders

Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Federal Rules of Appellate Procedure.

(d) Filing

Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially the same as Rule 5(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, with such adaptations as are necessary for criminal cases.

Note to Subdivision (b)

The first sentence of this rule is in substance the same as the first sentence of Rule 5(b) of the Federal Rules of Civil Procedure. The second sentence incorporates by reference the second and third sentences of Rule 5(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (c)

This rule is an adaptation for criminal proceedings of Rule 77(d) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. No consequence attaches to the failure of the clerk to give the prescribed notice, but in a case in which the losing party in reliance on the clerk's obligation to send a notice failed to file a timely notice of appeal, it was held competent for the trial judge, in the exercise of sound discretion, to vacate the judgment because of clerk's failure to give notice and to enter a new judgment, the term of court not having expired. *Hill* v. *Hawes,* 320 U.S. 520, 64 S. Ct. 334, 88 L. Ed. 283. rehearing denied 321 U.S. 801, 64 S. Ct. 515, 88 L. Ed. 1088.

Note to Subdivision (d)

This rule incorporates by reference Rule 5(d) and (e) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

1966 AMENDMENT

Subdivision (a).—The words "adverse parties" in the original rule introduced a question of interpretation. When, for example, is a co-defendant an adverse party? The amendment requires service on each of the parties thus avoiding the problem of interpretation and promoting full exchange of information among the parties. No restriction is intended, however, upon agreements among co-defendants or between the defendants and the government restricting exchange of papers in the interest of eliminating unnecessary expense. Cf. the amendment made effective July 1, 1963, to Civil Rule 5(a).

Subdivision (c).—The words "affected thereby" are deleted in order to require notice to all parties. Cf. the similar change made effective July 1, 1963, to Civil Rule 77(d).

The sentence added at the end of the subdivision eliminates the possibility of extension of the time to appeal beyond the provision for a 30 day extension on a showing or "excusable neglect" provided in Rule 37(a)(2). Cf. the similar change made in Civil Rule 77(d) effective in 1948. The question has arisen in a number of cases whether failure or delay in giving notice on the part of the clerk results in an extension of the time for appeal. The "general rule" has been said to be that in the event of such failure or delay "the time for taking an appeal runs from the date of later actual notice or receipt of the clerk's notice rather than from the date of entry of the order." *Lohman* v. *United States,* 237 F. 2d 645, 646 (6th Cir. 1956). See also *Rosenbloom* v. *United States,* 355 U.S. 80 (1957) (permitting an extension). In two cases it has been held that no extension results from the failure to give notice of entry of judgments (as opposed to orders) since such notice is not required by Rule 49(d). *Wilkinson* v. *United States,* 278 F. 2d 604 (10th Cir. 1960), cert. den. 363 U.S. 829; *Hyche* v. *United States,* 278 F. 2d 915 (5th Cir. 1960), cert. den. 364 U.S. 881. The excusable neglect extension provision in Rule 37(a)(2) will cover most cases where failure of the clerk to give notice of judgments or orders has misled the defendant. No need appears for an indefinite extension without time limit beyond the 30 day period.

1968 AMENDMENT

The amendment corrects the reference to Rule 37(a)(2), the pertinent provisions of which are contained in Rule 4(b) of the Federal Rules of Appellate Procedure.

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Affidavits used on motions, see rule 47.
Application for order by motion, see rule 47.
Enlargement of time for taking appeal not permitted, see rule 45.
Service of notice of motion and affidavits, see rule 45.

FEDERAL RULES OF CIVIL PROCEDURE

Notice of entry of judgments or orders, see rule 77, Title 28, Appendix, Judiciary and Judicial Procedure.
Service and filing of papers, see rule 5.

Rule 50. Calendars; Plan for Prompt Disposition

(a) Calendars

The district courts may provide for placing criminal proceedings upon appropriate calen-

dars. Preference shall be given to criminal proceedings as far as practicable.

(b) Plans for Achieving Prompt Disposition of Criminal Cases

To minimize undue delay and to further the prompt disposition of criminal cases, each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the prompt disposition of criminal cases in accordance with the provisions of Chapter 208 of Title 18, United States Code.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; Apr. 26, 1976, eff. Aug. 1, 1976.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a restatement of the inherent residual power of the court over its own calendars, although as a matter of practice in most districts the assignment of criminal cases for trial is handled by the United States attorney. Cf. Federal Rules of Civil Procedure, Rules 40 and 78, 28 U.S.C., Appendix. The direction that preference shall be given to criminal proceedings as far as practicable is generally recognized as desirable in the orderly administration of justice.

1972 AMENDMENT

The addition to the rule proposed by subdivision (b) is designed to achieve the more prompt disposition of criminal cases.

Preventing undue delay in the administration of criminal justice has become an object of increasing interest and concern. This is reflected in the Congress. See, e.g., 116 Cong. Rec. S7291-97 (daily ed. May 18, 1970) (remarks of Senator Ervin). Bills have been introduced fixing specific time limits. See S. 3936, H.R. 14822, H.R. 15888, 91st Cong., 2d Sess. (1970).

Proposals for dealing with the problem of delay have also been made by the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (1967) especially pp. 84-90, and by the American Bar Association Project on Standards for Criminal Justice, Standards Relating to Speedy Trial (Approved Draft, 1968). Both recommend specific time limits for each stage in the criminal process as the most effective way of achieving prompt disposition of criminal cases. See also Note, Nevada's 1967 Criminal Procedure Law from Arrest to Trial: One State's Response to a Widely Recognized Need, 1969 Utah L. Rev. 520, 542 no. 114.

Historically, the right to a speedy trial has been thought of as a protection for the defendant. Delay can cause a hardship to a defendant who is in custody awaiting trial. Even if afforded the opportunity for pretrial release, a defendant nonetheless is likely to suffer anxiety during a period of unwanted delay, and he runs the risk that his memory and those of his witnesses may suffer as time goes on.

Delay can also adversely affect the prosecution. Witnesses may lose interest or disappear or their memories may fade thus making them more vulnerable to cross-examination. See Note, The Right to a Speedy Criminal Trial, 57 Colum. L. Rev. 846 (1957).

There is also a larger public interest in the prompt disposition of criminal cases which may transcend the interest of the particular prosecutor, defense counsel, and defendant. Thus there is need to try to expedite criminal cases even when both prosecution and defense may be willing to agree to a continuance or continuances. It has long been said that it is the certain and prompt imposition of a criminal sanction rather than its severity that has a significant deterring effect upon potential criminal conduct. See Banfield and Anderson, Continuances in the Cook County Criminal Courts, 35 U. Chi. L. Rev. 259, 259-63 (1968).

Providing specific time limits for each stage of the criminal justice system is made difficult, particularly in federal courts, by the widely varying conditions which exist between the very busy urban districts on the one hand and the far less busy rural districts on the other hand. In the former, account must be taken of the extremely heavy caseload, and the prescription of relatively short time limits is realistic only if there is provided additional prosecutorial and judicial manpower. In some rural districts, the availability of a grand jury only twice a year makes unrealistic the provision of short time limits within which an indictment must be returned. This is not to say that prompt disposition of criminal cases cannot be achieved. It means only that the achieving of prompt disposition may require solutions which vary from district to district. Finding the best methods will require innovation and experimentation. To encourage this, the proposed draft mandates each district court to prepare a plan to achieve the prompt disposition of criminal cases in the district. The method prescribed for the development and approval of the district plans is comparable to that prescribed in the Jury Selection and Service Act of 1968, 28 U.S.C. § 1863(a).

Each plan shall include rules which specify time limits and a means for reporting the status of criminal cases. The appropriate length of the time limits is left to the discretion of the individual district courts. This permits each district court to establish time limits that are appropriate in light of its criminal caseload, frequency of grand jury meetings, and any other factors which affect the progress of criminal actions. Where local conditions exist which contribute to delay, it is contemplated that appropriate efforts will be made to eliminate those conditions. For example, experience in some rural districts demonstrates that grand juries can be kept on call thus eliminating the grand jury as a cause for prolonged delay. Where manpower shortage is a major cause for delay, adequate solutions will require congressional action. But the development and analysis of the district plans should disclose where manpower shortages exist; how large the shortages are; and what is needed, in the way of additional manpower, to achieve the prompt disposition of criminal cases.

The district court plans must contain special provision for prompt disposition of cases in which there is reason to believe that the pretrial liberty of a defendant poses danger to himself, to any other person, or to the community. Prompt disposition of criminal cases may provide an alternative to the pretrial detention of potentially dangerous defendants. See 116 Cong. Rec. S7291-97 (daily ed. May 18, 1970) (remarks of Senator Ervin). Prompt disposition of criminal cases in which the defendant is held in pretrial detention would ensure that the deprivation of liberty prior to conviction would be minimized.

Approval of the original plan and any subsequent modification must be obtained from a reviewing panel made up of one judge from the district submitting the plan (either the chief judge or another active judge appointed by him) and the members of the judicial council of the circuit. The makeup of this reviewing panel is the same as that provided by the Jury Selection and Service Act of 1968, 28 U.S.C. § 1863(a). This reviewing panel is also empowered to direct the modification of a district court plan.

The Circuit Court of Appeals for the Second Circuit recently adopted a set of rules for the prompt disposition of criminal cases. See 8 Cr. L. 2251 (Jan. 13, 1971). These rules, effective July 5, 1971, provide time limits for the early trial of high risk defendants, for court control over the granting of continuances, for criteria to control continuance practice, and for sanction against the prosecution or defense in the event of noncompliance with prescribed time limits.

1976 AMENDMENT

This amendment to rule 50(b) takes account of the enactment of The Speedy Trial Act of 1974, 18 U.S.C. §§ 3152-3156, 3161-3174. As the various provisions of

the Act take effect, see 18 U.S.C. § 3163, they and the district plans adopted pursuant thereto will supplant the plans heretofore adopted under rule 50(b). The first such plan must be prepared and submitted by each district court before July 1, 1976. 18 U.S.C. § 3165(e)(1).

That part of rule 50(b) which sets out the necessary contents of district plans has been deleted, as the somewhat different contents of the plans required by the Act are enumerated in 18 U.S.C. § 3166. That part of rule 50(b) which describes the manner in which district plans are to be submitted, reviewed, modified and reported upon has also been deleted, for these provisions now appear in 18 U.S.C. § 3165(c) and (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subd. (b) by the order of the United States Supreme Court of Apr. 26, 1976, effective Aug. 1, 1976, see section 1 of Pub. L. 94-349, July 8, 1976, 90 Stat. 822, set out as a note under section 3771 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Court calendars for jury and non-jury actions, see rule 79, Title 28, Appendix, Judiciary and Judicial Procedure.

Trial calendar, see rule 40.

Rule 51. Exceptions Unnecessary

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule is practically identical with Rule 46 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. It relates to a matter of trial practice which should be the same in civil and criminal cases in the interest of avoiding confusion. The corresponding civil rule has been construed in *Ulm* v. *Moore-McCormack Lines, Inc.*, 115 F.2d 492, C.C.A. 2d, and *Bucy* v. *Nevada Construction Company*, 125 F.2d 213, 218, C.C.A. 9th. See, also, Orfield, 22 Texas L.R. 194, 221. As to the method of taking objections to instructions to the jury, see Rule 30.

2. Many States have abolished the use of exceptions in criminal and civil cases. See, e.g., Cal. Pen. Code (Deering, 1941), sec. 1259; Mich. Stat. Ann. (Henderson, 1938), secs. 28.1046, 28.1053; Ohio Gen Code Ann. (Page, 1938), secs. 11560, 13442-7; Oreg. Comp. Laws Ann. (1940), secs. 5-704, 26-1001.

CROSS REFERENCES

Notice of plain errors or defects affecting substantial right by appellate courts, see rule 52.

Objections to instructions to jury, see rule 30.

FEDERAL RULES OF CIVIL PROCEDURE

Exceptions unnecessary, see rule 46, Title 28, Appendix, Judiciary and Judicial Procedure.

Objections to instructions to jury, see rule 51.

Rule 52. Harmless Error and Plain Error

(a) Harmless Error

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error

Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is a restatement of existing law, 28 U.S.C. former § 391 (second sentence): "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties"; 18 U.S.C. former § 556; "No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *." A similar provision is found in Rule 61 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (b)

This rule is a restatement of existing law, *Wiborg* v. *United States*, 163 U.S. 632, 658, 16 S. Ct. 1127, 1197, 2 cases, 41 L. Ed. 289; *Hemphill* v. *United States*, 112 F. 2d 505, C.C.A. 9th, reversed 312 U.S. 657, 61 S. Ct. 729, 85 L. Ed. 1106, conformed to 120 F. 2d 115, certiorari denied 314 U.S. 627, 62 S. Ct. 111, 86 L. Ed. 503. Rule 27 of the Rules of the Supreme Court, 28 U.S.C. foll. § 354, provides that errors not specified will be disregarded, "save as the court, at its option, may notice a plain error not assigned or specified." Similar provisions are found in the rules of several circuit courts of appeals.

CROSS REFERENCES

Harmless error, appellate courts, see section 2111 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Harmless error, civil proceedings, see rule 61, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 53. Regulation of Conduct in the Court Room

The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

While the matter to which the rule refers has not been a problem in the Federal courts as it has been in some State tribunals, the rule was nevertheless included with a view to giving expression to a standard which should govern the conduct of judicial proceedings, Orfield, 22 Texas L.R. 194, 222-3; Robbins, 21 A.B.A. Jour. 301, 304. See, also, Report of the Special Committee on Cooperation between Press, Radio and Bar, as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings (1937), 62 A.B.A. Rep 851, 862-865; (1932) 18 A.B.A. Jour. 762; (1926) 12 Id. 488; (1925) 11 Id. 64.

CROSS REFERENCES

Power of court to punish for contempt, see section 401 of this title.

Rule 54. Application and Exception

(a) Courts

These rules apply to all criminal proceedings in the United States District Courts; in the Dis-

trict Court of Guam; in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone Code) in the United States District Court for the District of the Canal Zone; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that all offenses shall continue to be prosecuted in the District Court of Guam and in the District Court of the Virgin Islands by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

(b) Proceedings

(1) *Removed proceedings.* These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure after removal, except that dismissal by the attorney for the prosecution shall be governed by state law.

(2) *Offenses outside a district or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by 18 U.S.C. § 3238.

(3) *Peace bonds.* These rules do not alter the power of judges of the United States or of United States magistrates to hold to security of the peace and for good behavior under 18 U.S.C. § 3043, and under Revised Statutes, § 4069, 50 U.S.C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

(4) *Proceedings before United States magistrates.* Proceedings involving minor offenses before United States magistrates, as defined in subdivision (c) of this rule, are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(5) *Other proceedings.* These rules are not applicable to extradition and rendition of fugitives; civil forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. Except as provided in Rule 20(d) they do not apply to proceedings under 18 U.S.C., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with that chapter. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§ 4300–4305, 33 U.S.C. §§ 391–396, or to proceedings involving disputes between seamen under Revised Statutes, §§ 4079–4081, as amended, 22 U.S.C. §§ 256–258, or to proceedings for fishery offenses under the Act of June 28, 1937, c. 392, 50 Stat. 325–327, 16 U.S.C. §§ 772–772i, or to proceedings against a witness in a foreign country under 28 U.S.C. § 1784.

(c) Application of terms

As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

"Attorney for the government" means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, and authorized assistant of a United States Attorney and when applicable to cases arising under the laws of Guam means the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

"Civil action" refers to a civil action in a district court.

The words "demurrer," "motion to quash," "plea in abatement," "plea in bar" and "special plea in bar," or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

"District court" includes all district courts named in subdivision (a) of this rule.

"Federal magistrate" means a United States magistrate as defined in 28 U.S.C. §§ 631–639, a judge of the United States or another judge or judicial official specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates.

"Judge of the United States" includes a judge of a district court, court of appeals, or the Supreme Court.

"Law" includes statutes and judicial decisions.

"Magistrate" includes a United States magistrate as defined in 28 U.S.C. §§ 631–639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. § 3041 to perform the functions prescribed in Rules 3, 4, and 5.

"Minor offense" is defined in 18 U.S.C. § 3401.

"Oath" includes affirmations.

"Petty offense" is defined in 18 U.S.C. § 1(3).

"State" includes District of Columbia, Puerto Rico, territory and insular possession.

"United States magistrate" means the officer authorized by 28 U.S.C. §§ 631–639.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)(1)

1. The act of June 28, 1940 (54 Stat. 688; 18 U.S.C. former § 687 (now § 3771)), authorizing the Supreme Court to prescribe rules of criminal procedure for the district courts of the United States in respect to proceedings prior to and including verdict or finding of guilty or not guilty or plea of guilty, is expressly applicable to the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, Virgin Islands, the Supreme Courts of Hawaii and Puerto Rico, and the United States Court for China. This is likewise true of the act of February 24, 1933 (47 Stat. 904; 18 U.S.C. former § 688 (now § 3772)), authorizing the Supreme Court to prescribe rules in respect to proceedings after verdict or finding or after plea of guilty. In this respect these two statutes differ from the act of June 19, 1934 (48 Stat. 1064; 28 U.S.C. former §§ 723b, 723c (now § 2072)), authorizing the Supreme Court to prescribe rules of civil procedure. The last-mentioned Act comprises only district courts of the United States and the courts of the District of Columbia. The phrase "district courts of the United States" was held not to include district courts in the territories and insular possessions, *Mookini* v. *United States*, 303 U.S. 201, 58 S.

Ct. 543, 82 L. Ed. 748, conformed to 95 F. 2d 960. By subsequent legislation the Federal Rules of Civil Procedure were extended to the District Court of the United States for Hawaii and to appeals therefrom (act of June 19, 1939; 53 Stat. 841; 48 U.S.C. former § 646) and to the District Court of the United States for Puerto Rico and to appeals therefrom (act of February 12, 1940; 54 Stat. 22; 48 U.S.C. former § 873a).

2. While the specific reference in the rule to the District Court of the United States for the District of Columbia is probably superfluous, since that court has the same powers and exercises the same jurisdiction as other district courts of the United States in addition to such local powers and jurisdiction as have been conferred upon it by statute (D.C. Code, 1940, Title 11, § 305), nevertheless it was listed in the rule in view of the fact that the Federal Rules of Civil Procedure contain a somewhat similar provision (Rule 81(d), 28 U.S.C., Appendix).

3. The United States Court for China has been omitted from the rule in view of the fact that the court has recently been abolished with the abandonment by the United States of its extraterritorial jurisdiction in China.

4. Although, as indicated above, the rule-making power of the Supreme Court in respect to criminal cases extends to the Supreme Courts of Hawaii and Puerto Rico, the rules are not made applicable to those two courts, in view of the fact that they are purely local appellate courts having no appellate jurisdiction over the district courts of the United States in those territories. Alaska and Hawaii have dual systems of courts: local courts exercising purely local jurisdiction and United States district courts exercising Federal jurisdiction. The Supreme Court of each of the two territories hears appeals only from the local courts.

5. Alaska.—There is a district court for the Territory of Alaska consisting of four divisions, established on a territorial basis, 48 U.S.C. §§ 101, 101a. As the only court in the Territory, it acts in a dual capacity: it has jurisdiction over cases arising under the laws of the United States as well as those arising under local laws. Although a legislative rather than a constitutional court, it is, nevertheless, deemed a court of the United States and has the jurisdiction of district courts of the United States, 48 U.S.C. §§ 101, 101a; *Steamer Coquitlam* v. *United States*, 163 U.S. 346, 16 S. Ct. 1117, 41 L. Ed. 184; *McAllister* v. *United States*, 141 U.S. 174, 179, 11 S. Ct. 949, 35 L. Ed. 693; *Ex parte Krause*, 228 Fed. 547, 549, W. D. Wash. Criminal procedure is now regulated by acts of Congress, by the Alaska Code of Criminal Procedure (Alaska Comp. Laws, 1933, pp. 959-1018), and by rules promulgated by the district court.

6. Hawaii.—Hawaii has a dual system of courts. The United States District Court for the Territory of Hawaii, a legislative court, has the jurisdiction of district courts of the United States and proceeds therein "in the same manner as a district court," 48 U.S.C. former §§ 641, 642. In addition, there are circuit courts having jurisdiction over cases arising under local laws. Appeals from the circuit courts run to the Supreme Court of the Territory, 48 U.S.C. § 631. These rules are made applicable to the district court, but not to the local courts. The Federal Rules of Civil Procedure have been made applicable to the district court and to appeals therefrom, 48 U.S.C. former § 646.

7. Puerto Rico.—Puerto Rico has a dual system of courts. The District Court of the United States for Puerto Rico, a legislative court, has jurisdiction of all cases cognizable in the district courts of the United States and proceeds "In the same manner," 48 U.S.C. § 863.

In addition, there are local courts for the trial of cases arising under local law, appeals therefrom running to the Supreme Court of the Territory. These rules are made applicable to the district court, but not to the local courts. The Federal Rules of Civil Procedure, 28 U.S.C., Appendix, have been extended to the district court, 48 U.S.C. former § 873a.

8. Virgin Islands.—In the Virgin Islands there is a District Court of the Virgin Islands, a legislative court, consisting of two divisions and exercising both Federal and local jurisdiction, 48 U.S.C. §§ 1405z, 1406. Heretofore the rules of practice and procedure have been prescribed "by law or ordinance or by rules and regulations of the district judge not inconsistent with law or ordinance," 48 U.S.C. § 1405z.

9. Canal Zone.—In the Canal Zone there is a United States District Court for the District of the Canal Zone, a legislative court, exercising both Federal and local jurisdiction, 48 U.S.C. former §§ 1344, 1345. Criminal procedure is regulated by the Code of Criminal Procedure of the Canal Zone (Canal Zone Code, Title 6; 48 Stat. 1122), and by rules of practice and procedure prescribed by the district judge, 48 U.S.C. former § 1344. There are no grand juries in the district, all prosecutions being instituted by information. In the light of these circumstances and because of the peculiar status of the Canal Zone and its quasi-military nature, these rules have been made applicable to its district court, only with respect to proceedings after verdict or finding of guilty or plea of guilty.

10. By order dated March 31, 1941, effective July 1, 1941, the Supreme Court extended the rules of practice and procedure after plea of guilty, verdict or finding of guilty, in criminal cases, to the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, and all subsequent proceedings in such cases in the United States circuit courts of appeals and in the Supreme Court of the United States, 312 U.S. 721.

Note to Subdivision (a)(2)

1. Rules 3, 4, and 5, supra, relate to proceedings before United States commissioners.

2. Justices and judges of the United States, as well as United States commissioners, may issue warrants and conduct proceedings as committing magistrates, 18 U.S.C. former § 591 (now § 3041) (Arrest and removal for trial); 9 Edmunds, Cyclopedia of Federal Procedure, 2d Ed., secs. 3800, 3819.

3. In the District of Columbia judges of the Municipal Court have authority to issue warrants and conduct proceedings as committing magistrates, D.C. Code, 1940, Title 11, secs. 602, 755. These proceedings are governed by these rules. The Municipal Court of the District of Columbia is also a local court for the trial of misdemeanors, but when so acting it is not a court of the United States. These rules, therefore, do not apply to such proceedings.

4. State and local judges and magistrates may issue warrants and act as committing magistrates in Federal cases, 18 U.S.C. former § 591 (now § 3041). Only a very small proportion of cases are brought before them, however, and then ordinarily only in an emergency. Since these judicial officers may not be familiar with Federal procedure, these rules have not been made applicable to such proceedings.

Note to Subdivision (b)(1)

1. Certain types of State criminal prosecutions, principally those in which defendant is an officer appointed under or acting by authority of a revenue law of the United States and is prosecuted on account of an act done under color of his office, are removable to a Federal court on defendant's motion, 28 U.S.C. former § 74 (now §§ 1443, 1446, 1447) (Removal of suits from State courts; causes against persons denied civil rights); former sec. 76 (now §§ 1442, 1446, 1447) (Removal of suits from State courts; suits and prosecutions against revenue officers). In such cases the Federal court applies the substantive law of the State, but follows Federal procedure; *State of Tennessee* v. *Davis*, 100 U.S. 257, 25 L.Ed. 648; *Carter* v. *Tennessee*, 18 F.2d 850, C.C.A. 6th; *Miller* v. *Kentucky*, 40 F.2d 820, C.C.A. 6th. See also, *State of Maryland* v. *Soper*, 270 U.S. 9, 46 S.Ct. 185, 70 L.Ed. 449. The rule is, therefore, a restatement of existing law, except that it does not affect whatever power the State prosecutor may have as to dismissal.

2. The rule does not affect the mode of removing a case from a State to a Federal court and leaves undisturbed the statutes governing this matter, 28 U.S.C. former §§ 74–76 (now §§ 1442, 1443, 1446, 1447).

Note to Subdivision (b)(2)

This rule should be read in conjunction with Rule 18, which provides that "Except as otherwise permitted by statute or by these rules, the prosecution shall be held in a district in which the offense was committed * * *".

Note to Subdivision (b)(4)

United States commissioners specially designated for that purpose by the court by which they are appointed have trial jurisdiction over petty offenses committed on Federal reservations if the defendant waives his right to be tried in the district court and consents to be tried before the commissioner. Act of October 9, 1940, 54 Stat. 1058, 18 U.S.C. former § 576 (now § 3401). A petty offense is an offense the penalty for which does not exceed confinement in a common jail without hard labor for a period of six months or a fine of $500, or both, 18 U.S.C. former § 541 (now § 1). Appeals from convictions by commissioners lie to the district court, 18 U.S.C. former § 576a (now § 3402). These rules do not apply to trials before United States commissioners in such cases, since rules of procedure and practice in such matters were specially prescribed by the Supreme Court on January 6, 1941, 311 U.S. 733 et seq. The substantive law applicable in such cases with respect to offenses other than so-called Federal offenses is governed by 18 U.S.C. former § 468 (now § 13) (Laws of States adopted for punishing wrongful acts; effect of repeal). In addition, National Park commissioners have limited trial jurisdiction with respect to offenses committed in National Parks. Trials before commissioners in such cases are not governed by these rules, although when a National Park commissioner conducts a proceeding as a committing magistrate, these rules are applicable.

Among the statutes relating to jurisdiction of and proceedings before National Park commissioners are the following:

U.S.C. Title 16:

§ 10 (Arrests by employees of park service for violation of laws and regulations)

§ 10a (Arrests by employees for violation of regulations made under § 9a)

§ 27 [now 28 U.S.C. §§ 131, 631, 632] (Yellowstone National Park; commissioner; jurisdiction and powers)

§ 66 [now 28 U.S.C. §§ 631, 632] (Yosemite and Sequoia National Parks; commissioners; appointment; jurisdiction)

§ 70 [now 18 U.S.C. §§ 3041, 3141; 18 U.S.C., App., Rules 4, 5(c), 9] (Same; arrests by commissioners for certain offenses; holding persons arrested for trial; bail)

§ 101 [now 18 U.S.C. §§ 3041, 3141; 18 U.S.C., App., Rule 4; 28 U.S.C., App., Rule 4] (Mount Rainier National Park; commissioner; arrest; bail)

§ 102 [now 18 U.S.C. § 3053; 18 U.S.C., App., Rule 4; 28 U.S.C., App., Rule 4] (Same; commissioner; direction of process of; arrests by other officers)

§ 117b [now 18 U.S.C. § 13] (Mesa Verde National Park; application of Colorado laws to offenses)

§ 117f [now 18 U.S.C. §§ 3041, 3141; 18 U.S.C., App., Rules 4, 5(c), 9] (Same; criminal offenses not covered by section 117c; jurisdiction of commissioner)

§ 117g [now 18 U.S.C. § 3053; 18 U.S.C., App., Rule 4; 28 U.S.C., App., Rule 4] (Same; process to whom issued; arrests without process)

§ 129 [now 28 U.S.C. §§ 631, 632] (Crater Lake National Park; commissioner; appointment; powers and duties)

§ 130 [now 18 U.S.C. §§ 3041, 3141; 18 U.S.C., App., Rules 4, 5(c), 9] (Same; commissioner; arrests by; bail)

§ 131 [18 § 3053; 18 Rule 4; 28 Rule 4] (Same; commissioner; direction of process; arrest without process)

§ 172 [28 §§ 631, 632] (Glacier National Park; commissioner; jurisdiction; powers and duties)

§ 173 [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; commissioner; arrest of offenders, confinement, and bail)

§ 174 [18 § 3053; 28 Rule 4] (Same; commissioner; process directed to marshal; arrest without process)

§ 198b [18 § 13] (Rocky Mountain National Park; punishment of offenses; Colorado laws when followed)

§ 198e [28 §§ 631, 632] (Same; United States Commissioner; appointment; jurisdiction; issuing process; appeals; rules of procedure)

§ 198f [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; United States Commissioner; arrest of persons for offenses not covered by section 198c; bail)

§ 198g [18 § 3053; 18 Rule 4; 28 Rule 4] (Same; United States Commissioner; process to whom directed; arrest without process)

§ 204b [18 § 13] (Lassen Volcanic National Park; application of California laws to offenses)

§ 204e [28 §§ 631, 632] (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure)

§ 204f [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; criminal offenses not covered by section 204c; jurisdiction of commissioner)

§ 204g [18 § 3053; 18 Rule 4; 28 Rule 4] (Same; process to whom issued; arrests without process)

§ 376 [28 § 632] (Hot Springs National Park; prosecutions for violations of law or rules and regulations)

§ 377 [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; prosecutions for other offenses)

§ 378 [18 § 3053; 18 Rule 4; 28 Rule 4] (Same; process directed to marshal; arrests by others)

§ 381 [18 § 3041] (Same; execution of sentence on conviction)

§ 382 [18 § 3041] (Same; imprisonment for nonpayment of fines or costs)

§ 395b [18 § 13] (Hawaii National Park; application of Hawaiian laws to offenses)

§ 395e [28 §§ 631, 632] (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure; acting commissioners)

§ 395f [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; criminal offenses not covered by section 395c; jurisdiction of commissioner)

§ 395g [18 § 3053; 18 Rule 4] (Same; process to whom issued; arrests without process)

§ 403c–1 (Shenandoah National Park and Great Smoky Mountains National Park; notice of assumption of police jurisdiction over Shenandoah Park by United States; exceptions)

§ 403c–5 [28 §§ 631, 632] (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure)

§ 403c–6 [28 § 632] (Same; jurisdiction of other commissioners)

§ 403c–7 [18 §§ 3041, 3141; 18 Rules 4, 5(c), 9] (Same; commissioner's jurisdiction of offenses not covered by section 403c–2)

§ 403c–8 [18 § 3053; 18 Rule 4; 28 Rule 4] (Same; process to whom directed, arrest without process)

§ 415 (National Military Parks; arrest and prosecution of offenders)

Note to Subdivision (b)(5)

1. Foreign extradition proceedings are governed by the following statutes:

U.S.C. Title 18 former:

§ 651 [§ 3184] (Fugitives from foreign country)
§ 652 [§ 3185] (Fugitives from country under control of United States)
§ 653 [§ 3186] (Surrender of fugitive)
§ 654 [§ 3188] (Time allowed for extradition)
§ 655 [§ 3190] (Evidence on hearing)
§ 656 [§ 3191] (Witnesses for indigent defendants)
§ 657 [§ 3189] (Place and character of hearing)
§ 658 [§ 3181] (Continuance of provisions limited)
§ 659 [§ 3192] (Protection of accused)
§ 660 [§ 3193] (Agent receiving offenders; powers)

Interstate rendition or extradition proceedings are governed by the following statutes:

U.S.C. Title 18 former:

§ 662 [§§ 3182, 3195] (Fugitives from State or Territory)
§ 662c [§§ 752, 3183, 3195] (Fugitives from State or Territory; arrest and removal)
§ 662d [§§ 3187, 3195] (Fugitives from State or Territory; provisional arrest and detention)

2. Proceedings relating to forfeiture of property used in connection with a violation of a statute of the United States are governed by various statutes, among which are following:

U.S.C. Title 16:

§ 26 (Yellowstone Park; regulations for hunting and fishing in; punishment for violation; forfeitures)
§ 65 (Yosemite and Sequoia National Parks; seizure and forfeiture of guns, traps, teams, horses, and so forth)
§ 99 (Mount Rainier National Park; protection of game and fish; forfeitures of guns, traps, teams, and so forth)
§ 117d (Mesa Verde National Park; forfeiture of property used for unlawful purpose)
§ 128 (Crater Lake National Park; hunting and fishing; forfeitures or seizure of guns, traps, teams, etc., for violating regulations)
§ 171 (Glacier National Park; hunting and fishing; forfeitures and seizures of guns, traps, teams, and so forth)
§ 198d (Rocky Mountain National Park; forfeiture of property used in commission of offenses)
§ 204d (Lassen Volcanic National Park; forfeiture of property used for unlawful purposes)
§ 635 (Importing illegally taken skins; forfeiture)
§ 706 (Arrests; search warrants)
§ 727 (Upper Mississippi River Wild Life and Fish Refuge; powers of employees of Department of the Interior; searches and seizures)
§ 772e (Penalties and forfeitures)

U.S.C. Title 18 former:

§ 286 [§ 492] (Forfeiture of counterfeit obligations, etc.; failure to deliver)
§ 645 [§ 3611] (Confiscation of firearms possessed by convicted felons)
§ 646 [§ 3617] (Remission or mitigation of forfeitures under liquor laws; possession pending trial)
§ 647 [§ 3616] (Use of confiscated motor vehicles)

U.S.C. Title 19:

§ 483 [§ 1595a] (Forfeitures; penalty for aiding unlawful importation)
§ 1592 (Fraud; penalty against goods)
§ 1602 (Seizure; report to collector)
§ 1603 (Seizure; collector's reports)
§ 1604 (Seizure; prosecution)
§ 1605 (Seizure; custody)
§ 1606 (Seizure; appraisement)
§ 1607 (Seizure; value $1,000 or less)
§ 1608 (Seizure; claims; judicial condemnation)
§ 1609 (Seizure; summary of forfeiture and sale)
§ 1610 (Seizure; value more than $1,000)
§ 1611 (Seizure; sale unlawful)
§ 1612 (Seizure; summary sale)
§ 1613 (Disposition of proceeds of forfeited property)
§ 1614 (Release of seized property)
§ 1615 (Burden of proof in forfeiture proceedings)
§ 1703 (Seizure and forfeiture of vessels)
§ 1705 (Destruction of forfeited vessel)

U.S.C. Title 21.

§ 334 (Seizure)
§ 337 (Proceedings in name of United States; provision as to subpenas)

U.S.C. Title 22:

§ 401 (Seizure of war materials intended for unlawful export generally; forfeiture)
§ 402 (Seizure of war materials intended for unlawful export generally; warrant for detention of seized property)
§ 403 (Seizure of war materials intended for unlawful export generally; petition for restoration of seized property)
§ 404 (Seizure of war materials intended for unlawful export generally; libel and sale of seized property)
§ 405 (Seizure of war materials intended for unlawful export generally; method of trial; bond for redelivery)
§ 406 (Seizure of war materials intended for unlawful export generally; sections not to interfere with foreign trade)

U.S.C. Title 26:

§ 3116 [§ 7302] (Forfeitures and seizures)

3. Collection of fines and penalties is accomplished in the same manner as the collection of a civil judgment. See Rule 69(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. For mode of discharging indigent convicts imprisoned for non-payment of fine, see 18 U.S.C. former § 641 (now § 3569).

4. The Federal Juvenile Delinquency Act, 18 U.S.C. former §§ 921–929 (now §§ 5031–5037), authorizes prosecution of a juvenile delinquent on the charge of juvenile delinquency, if the juvenile consents to this procedure. In such cases the court may be convened at any time and place, in chambers or otherwise, and the trial is without a jury. The purpose of excepting proceedings under the act is to make inapplicable to them the requirement of an arraignment in open court (Rule 10) and other similar provisions.

5. As habeas corpus proceedings are regarded as civil proceedings, they are not governed by these rules. The procedure in such cases is prescribed by 28 U.S.C. former §§ 451–466 (now §§ 2241–2243, 2251–2253). Appeals in habeas corpus proceedings are governed by the Federal Rules of Civil Procedure (Rule 81(a)(2) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix).

Note to Subdivision (c)

1. This rule is analogous to Rule 81(e) of the Federal Rules of Civil Procedure, 28 U.S.C. following § 2072.

2. 1 U.S.C. §§ 1–6, containing general rules of construction, should be read in conjunction with this rule.

3. In connection with the definition of "attorney for the Government", see the following statutes:

U.S.C. Title 5:

§ 291 (Establishment of Department)
§ 293 (Solicitor General)
§ 294 (Assistant to Attorney General)
§ 295 (Assistant Attorneys General)
§ 309 (Conduct and argument of cases by Attorney General and Solicitor General)
§ 310 (Conduct of legal proceedings)
§ 311 (Performance of duty by officers of Department)

§ 312 [28 §§ 503, 507, 508] (Counsel to aid district attorneys)
§ 315 (Appointment and oath of special attorneys or counsel)

U.S.C. Title 28 former:

§ 481 [§ 501] (District attorneys)
§ 483 [§ 502] (Assistant district attorneys)
§ 485 [§ 507] (District attorneys; duties)

4. The last sentence of this rule has particular reference to 18 U.S.C. former § 682 (now § 3731). (Appeals; on behalf of the United States; rules of practice and procedure), which authorizes the United States to appeal in criminal cases from a decision on a motion to quash, a demurrer or a special plea in bar, if the defendant has not been placed in jeopardy. It is intended that the right of the Government to appeal in such cases should not be affected as the result of the substitution of a motion under Rule 12 for a demurrer, motion to quash and a special plea in bar. The rule is equally applicable to any other statute employing the same terminology.

1948 AND 1956 AMENDMENTS

To conform to the nomenclature of revised Title 28 with respect to district courts and courts of appeals (28 U.S.C. §§ 132(a), 43(a); to eliminate special reference to the district courts for the District of Columbia, Hawaii and Puerto Rico which are now United States district courts for all purposes (28 U.S.C. §§ 88, 91, 119, 132, 133, 451), and to eliminate special reference to the court of appeals for the District of Columbia which is now a United States court of appeals for all purposes (28 U.S.C. §§ 41, 43).

The amendment to paragraph (1) is to incorporate nomenclature of Revised Title 28 and in paragraphs (2), (3), (4), and (5) to insert proper reference to Title 18 and 28 in place of repealed acts.

Under revised Title 28 the justices of the United States Court of Appeals and District Court for the District of Columbia become circuit and district judges (see 28 U.S.C. §§ 44, 133) and the use of the descriptive phrase "senior circuit judge" is abandoned in favor of the title "chief judge" in all circuits including the District of Columbia.

1966 AMENDMENT

Subdivision (a).—The first change reflects the granting of statehood to Alaska. The second change conforms to Section 3501 of the Canal Zone Code.

Subdivision (b).—The change is made necessary by the new provision in Rule 20(d).

1972 AMENDMENT

Subdivisions (a) and (b) are amended to delete the references to "commissioners" and to substitute, where appropriate, the phrase "United States magistrates."

Subdivision (a)(2) is deleted. In its old form it makes reference to "rules applicable to criminal proceedings before commissioners," which are now replaced by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates (1971). Rule 1 of the magistrates' rules provides that they are applicable to cases involving "minor offenses" as defined in 18 U.S.C. § 3401 "before United States magistrates." Cases involving "minor offenses" brought before a judge of the district court will be governed by the Rules of Criminal Procedure for the United States District Courts.

The last sentence of old subdivision (a)(2) is stricken for two reasons: (1) Whenever possible, cases should be brought before a United States magistrate rather than before a state or local judicial officer authorized by 18 U.S.C. § 3041. (2) When a state or local judicial officer is involved, he should conform to the federal rules.

Subdivision (b)(4) makes clear that minor offense cases before United States magistrates are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates (1971). See rule 1 of the magistrates' rules.

In subdivision (b)(5) the word "civil" is added before the word "forfeiture" to make clear that the rules *do* apply to criminal forfeitures. This is clearly the intention of Congress. See Senate Report No. 91-617, 91st Cong., 1st Sess., Dec. 16, 1969, at 160:

Subsection (a) provides the remedy of criminal forfeiture. Forfeiture trials are to be governed by the Fed. R. Crim. P. But see Fed. R. Crim. P. 54(b)(5).

Subdivision (c) is amended to list the defined terms in alphabetical order to facilitate the use of the rule. There are added six new definitions.

"Federal magistrate" is a phrase to be used whenever the rule is intended to confer authority on any federal judicial officer including a United States magistrate.

"Judge of the United States" is a phrase defined to include district court, court of appeals, and supreme court judges. It is used in the rules to indicate that only a judge (not to include a United States magistrate) is authorized to act.

"Magistrate" is a term used when both federal and state judicial officers may be authorized to act. The scope of authority of state or local judicial officers is clarified by the enumeration of those rules (3, 4, and 5) under which they are authorized to act.

"United States magistrate" is a phrase which refers to the federal judicial officer created by the Federal Magistrates Act (28 U.S.C. §§ 631-639).

Also added are cross references to the statutory definitions of "minor offense" and "petty offense."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by Order of April 9, 1956, became effective 90 days thereafter.

CROSS REFERENCES

Extradition proceedings, see section 3181 et seq. of this title.

Minor offense proceedings before United States Magistrates, see sections 3401 and 3402 of this title.

Motions substituted for pleas, see rule 12.

Power of state magistrates to commit persons for Federal offenses, see section 3041 of this title.

Power to make rules of criminal procedure, see sections 3771 and 3772 of this title.

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Proceedings relating to juvenile delinquents, see section 5031 et seq. of this title.

Removal of State criminal proceedings against certain Federal officers to district courts, see section 1442 of Title 28, Judiciary and Judicial Procedure.

Scope of rules, generally, see rule 1.

FEDERAL RULES OF CIVIL PROCEDURE

Applicability in general, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

Scope of rules, see rule 1.

Rule 55. Records

The clerk of the district court and each United States magistrate shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, may prescribe. Among the records required to be kept by the clerk shall be a book known as the "criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

NOTES OF ADVISORY COMMITTEE ON RULES

The Federal Rules of Civil Procedure Rule 79, 28 U.S.C., Appendix, prescribed in detail the books and records to be kept by the clerk in civil cases. Subsequently to the effective date of the civil rules, however, the act establishing the Administrative Office of the United States Courts became law (act of August 7, 1939; 53 Stat. 1223; 28 U.S.C. former §§ 444-450 (now §§ 332-333, 456, 601-610)). One of the duties of the Director of that Office is to have charge, under the supervision and direction of the Conference of Senior Circuit Judges, of all administrative matters relating to the offices of the clerks and other clerical and administrative personnel of the courts, 28 U.S.C. former § 446 (now §§ 604, 609). In view of this circumstance it seemed best not to prescribe the records to be kept by the clerks of the district courts and by the United States commissioners, in criminal proceedings, but to vest the power to do so in the Director of the Administrative Office of the United States Courts with the approval of the Conference of Senior Circuit Judges.

1948 AMENDMENT

To incorporate nomenclature provided for by Revised Title 28 U.S.C., § 331.

1966 AMENDMENT

Rule 37(a)(2) provides that for the purpose of commencing the running of the time for appeal a judgment or order is entered "when it is entered in the criminal docket." The sentence added here requires that such a docket be kept and that it show the dates on which judgments or orders are entered therein. Cf. Civil Rule 79(a).

CROSS REFERENCES

Proceedings before United States Magistrates, see Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, this Appendix.

Supervisory duties of Director of Administrative Office of the United States Courts, see section 604 of Title 28, Judiciary and Judicial Procedure.

Rule 56. Courts and Clerks

The district court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

NOTES OF ADVISORY COMMITTEE ON RULES

1. The first sentence of this rule is substantially the same as Rule 77(a) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, except that it is applicable to circuit courts of appeals as well as to district courts.

2. In connection with this rule, see 28 U.S.C. former § 14 (Monthly adjournments for trial of criminal causes) and 28 U.S.C. former § 15 (now § 141) (Special terms). These sections "indicate a policy of avoiding the hardships consequent upon a closing of the court during vacations," *Abbott* v. *Brown*, 241 U.S. 606, 611, 36 S. Ct. 689, 60 L. Ed. 1199.

3. The second sentence of the rule is identical with the first sentence of Rule 77(c) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

4. The term "legal holidays" includes Federal holidays as well as holidays prescribed by the laws of the State where the clerk's office is located.

1948 AMENDMENT

To incorporate nomenclature provided for by Revised Title 28, U.S.C. § 43(a).

1966 AMENDMENT

The change is in conformity with the changes made in Rule 45. See the similar changes in Civil Rule 77(c) made effective July 1, 1963.

1968 AMENDMENT

The provisions relating to courts of appeals are included in Rule 47 of the Federal Rules of Appellate Procedure.

1971 AMENDMENT

The amendment adds Columbus Day to the list of legal holidays. See the Note accompanying the amendment of Rule 45(a).

CROSS REFERENCES

Courts always open, see section 452 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

District courts always open, see rule 77, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 57. Rules of Court

(a) Rules by District Courts

Rules made by district courts for the conduct of criminal proceedings shall not be inconsistent with these rules. Copies of all rules made by a district court shall upon their promulgation be furnished to the Administrative Office of the United States Courts. The clerk shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, to the end that all rules made as provided herein be published promptly and that copies of them be available to the public.

(b) Procedure Not Otherwise Specified

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Dec. 4, 1967, eff. July 1, 1968.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially a restatement of 28 U.S.C. former § 731 (now § 2071) (Rules of practice in district courts). A similar provision is found in Rule 83 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

Note to Subdivision (b)

1. One of the purposes of this rule is to abrogate any existing requirement of conformity to State procedure on any point whatsoever. The Federal Rules of Civil Procedure, 28 U.S.C., Appendix, have been held to repeal the Conformity Act, 28 U.S.C. former § 724, *Sibbach* v. *Wilson*, 312 U.S. 1, 10, 61 S. Ct. 422, 85 L. Ed. 479.

2. While the rules are intended to constitute a comprehensive procedural code for criminal cases in the Federal courts, nevertheless it seemed best not to endeavor to prescribe a uniform practice as to some matters of detail, but to leave the individual courts free to regulate them, either by local rules or by usage. Among such matters are the mode of impaneling a

jury, the manner and order of interposing challenges to jurors, the manner of selecting the foreman of a trial jury, the matter of sealed verdicts, the order of counsel's arguments to the jury, and other similar details.

1948 AMENDMENT

To incorporate nomenclature provided for by Revised Title 28, U.S.C., § 43(a).

1968 AMENDMENT

The provisions relating to the court of appeals are included in Rule 47 of the Federal Rules of Appellate Procedure.

CROSS REFERENCES

Administrative Office of United States courts, see section 601 et seq. of Title 28, Judiciary and Judicial Procedure.

Appeal rules in criminal codes, see various rules of courts of appeals.

Local rules of criminal procedures, see various local rules of district courts.

Rule-making power generally, see section 2071 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Local rules not inconsistent with court rules, see rule 83, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 58. Forms

The forms contained in the Appendix of Forms are illustrative and not mandatory.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is similar to Rule 84 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix. The forms are found in the Appendix (Forms 1-27). The practice of appending illustrative forms to serve as guides has been found useful in connection with many criminal codes. See A. L. I. Code of Criminal Procedure, Commentaries to secs. 152, 153 and 188. See, also, Criminal Appeals Rules, 292 U.S. 661, and Petty Offense Rules, 311 U.S. 733. Forms are contained in the English Indictments Act, 1915, 5 & 6 Geo. V, c. 90.

FEDERAL RULES OF CIVIL PROCEDURE

Forms, see rule 84, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 59. Effective Date

These rules take effect on the day which is 3 months subsequent to the adjournment of the first regular session of the 79th Congress, but if that day is prior to September 1, 1945, then they take effect on September 1, 1945. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is based on act of June 29, 1940 (54 Stat. 688; 18 U.S.C. former § 687 (now § 3771)). It is substantially the same as Rule 86 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix.

EFFECTIVE DATE OF 1966 AMENDMENTS; TRANSMISSION TO CONGRESS; RESCISSION

Sections 2 to 4 of Order of the Supreme Court dated February 26, 1966, provided:

"2. That the foregoing amendments and additions to the Rules of Criminal Procedure shall take effect on July 1, 1966, and shall govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

"3. That the Chief Justice be, and he hereby is, authorized to transmit to the Congress the foregoing amendments and additions to the Rules of Criminal Procedure in accordance with the provisions of title 18, U.S.C., section 3771.

"4. That Rule 19 and subdivision (c) of Rule 45 of the Rules of Criminal Procedure for the United States District Courts, promulgated by this court on December 26, 1944, effective March 21, 1946, are hereby rescinded, effective July 1, 1966."

FEDERAL RULES OF CIVIL PROCEDURE

Effective date, see rule 86, Title 28, Appendix, Judiciary and Judicial Procedure.

Rule 60. Title

These rules may be known and cited as the Federal Rules of Criminal Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is similar to Rule 85 of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, which reads as follows:

These rules may be known and cited as the Federal Rules of Civil Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Title, see rule 85, Title 28, Appendix, Judiciary and Judicial Procedure.

APPENDIX OF FORMS

(See Rule 58)

FORM 1—INDICTMENT FOR MURDER IN THE FIRST DEGREE OF FEDERAL OFFICER

In the United States District Court for the ——District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. §§ 1111, 1114)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe with premeditation and by means of shooting murdered John Roe, who was then an officer of the Federal Bureau of Investigation of the Department of Justice engaged in the performance of his official duties.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 2—INDICTMENT FOR MURDER IN THE FIRST DEGREE ON FEDERAL RESERVATION

In the United States District Court for the —— District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. § 1111)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, and on lands acquired for the use of the United States and under the (exclusive) (concurrent) jurisdiction of the United States, John Doe with premeditation shot and murdered John Roe.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 3—INDICTMENT FOR MAIL FRAUD

In the United States District Court for the ——— District of ————, ———— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE ET AL.	No. ———— (18 U.S.C. § 1341)

The grand jury charges:

1. Prior to the —— day of ————, 19—, and continuing to the —— day of ————, 19—,[1] the defendants John Doe, Richard Roe, John Stiles and Richard Miles devised and intended to devise a scheme and artifice to defraud purchasers of stock of XY Company, a California corporation, and to obtain money and property by means of the following false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be false when made: That the XY Company owned a mine at or near San Bernardino, California; that the mine was in actual operation; that gold ore was being obtained at the mine and sold at a profit; that the current earnings of the company would be sufficient to pay dividends on its stock at the rate of six per cent per annum.

2. On the —— day of ————, 19—, in the ———— District of ————, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Mary Brown, 110 Main Street, Stockton, California, to be sent or delivered by the Post Office Establishment of the United States.

SECOND COUNT

1. The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

2. On the —— day of ————, 19—, in the ———— District of ————, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. John J. Jones, 220 First Street, Batavia, New York, to be sent or delivered by the Post Office Establishment of the United States.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

[1] Insert last mailing data alleged.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 4.—INDICTMENT FOR SABOTAGE

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE	No. ———— (18 U.S.C. § 2154)

The grand jury charges:

On or about the —— day of ————, 19—, within the ———— District of ————, while the United States was at war, John Doe, with reason to believe that his act might injure, interfere with or obstruct the United States in preparing for or carrying on the war, wilfully made and caused to be made in a defective manner certain war material consisting of shells, in that he placed and caused to be placed certain material in a cavity of the shells so as to make them appear to be solid metal, whereas in fact the shells were hollow.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 5—INDICTMENT FOR INTERNAL REVENUE VIOLATION

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE	No. ———— (26 U.S.C. § 2833)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe carried on the business of a distiller without having given bond as required by law.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

REFERENCES IN TEXT

Section 2833 of Title 26, United States Code, refers to the Internal Revenue Code of 1939. Such provision relating to penalty and forfeiture for distilling without giving bond is now covered by sections 5601(a)(4), 5602 and 5615(3) of Internal Revenue Code of 1954, as set out in Title 26, United States Code.

FORM 6—INDICTMENT FOR INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLE

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE	No. ———— (18 U.S.C. § 2312)

The grand jury charges:

On or about the —— day of ————, 19—, John Doe transported a stolen motor vehicle from ————, State of ————, to ————, State of ————, in ———— District of

————————, and he then knew the motor vehicle to have been stolen.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 7—INDICTMENT FOR RECEIVING STOLEN MOTOR VEHICLE

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. § 2313)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe received and concealed a stolen motor vehicle, which was moving as interstate commerce, and he then knew the motor vehicle to have been stolen.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 8—INDICTMENT FOR IMPERSONATION OF FEDERAL OFFICER

In the United States District Court for the ———— District of ————, ————Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. § 912)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe with intent to defraud the United States and Mary Major falsely pretended to be an officer and employee acting under the authority of the United States, namely, an agent of the Federal Bureau of Investigation, and falsely took upon himself to act as such, in that he falsely stated that he was a special agent of the Federal Bureau of Investigation engaged in pursuit of a person charged with an offense against the United States.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 9—INDICTMENT FOR OBTAINING MONEY BY IMPERSONATION OF FEDERAL OFFICER

In the United States District Court for the ———— District of ————, ————Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. § 912)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe with intent to defraud the United States and Mary Major, falsely pretended to be an officer and employee acting under the authority of the United States, namely, an agent of the Alcohol Tax Unit of the Department of the Treasury, and in such pretended character demanded and obtained from Mary Major the sum of $100.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 10—INDICTMENT FOR PRESENTING FRAUDULENT CLAIM AGAINST THE UNITED STATES

In the United States District Court for the ———— District of ————, ————Division.

UNITED STATES OF AMERICA
v.
JOHN DOE
No. ————
(18 U.S.C. § 287)

The grand jury charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe presented to the War Department of the United States for payment a claim against the Government of the United States for having delivered to the Government 100,000 lineal feet of No. 1 white pine lumber, and he then knew the claim to be fraudulent in that he had not delivered the lumber to the Government.

A True Bill.

————————,

Foreman.

————————,

United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 11—INFORMATION FOR FOOD AND DRUG VIOLATION

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE ET AL.
No. ————
(21 U.S.C. §§ 331, 333, 342)

The United States Attorney charges:

On or about the —— day of ————, 19—, in the ———— District of ————, John Doe unlawfully caused to be introduced into interstate commerce by delivery for shipment from the city[1] of ————, ———— (State), to the city[1] of ————, ———— (State), a consignment of cans containing articles of food which were adulterated in that they consisted in whole or in part of decomposed vegetable substance.

————————,

United States Attorney.

[1] Name of city is stated only to preclude a motion for a bill of particulars and not because such a statement is an essential fact to be alleged.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 12—WARRANT FOR ARREST OF DEFENDANT

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE } No. ————

To ————.[1]

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the ———— District of ———— in the city of ———— to answer to an indictment charging him with robbery of property of the First National Bank of ————, in violation of 12 U.S.C. § 588b.[2]

————,
Clerk.

By ————,
Deputy Clerk.

[1] Insert designation of officer to whom warrant is issued, e.g., "any United States Marshal or any other authorized officer"; or "United States Marshal for ———— District of ————"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

[2] So in original. Probably should be "12 U.S.C. § 2113".

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 13—SUMMONS

In the United States District Court for the ———— District of ————, ———— Division.

UNITED STATES OF AMERICA
v.
JOHN DOE } No. ————

To JOHN DOE:

You are hereby summoned to appear before the District Court for the District of ———— at the Post Office Building in the city of ———— on the —— day of ————, 19—, at 10 o'clock A. M. to answer to an information charging you with unlawful transportation of intoxicating liquor on which the internal revenue tax had not been paid.

————,
Clerk.

By ————,
Deputy Clerk.

This summons was received by me at ———— on ————

————,
Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 14—WARRANT OF REMOVAL

In the United States District Court for the ———— District of ————, ———— Division.

To ————:

The grand jury of the United States for the ————District of ———— having indicted John Doe on a charge of murder in the first degree, and John Doe having been arrested in this District and, after (waiving) hearing, having been committed by a United States Magistrate to your custody pending his removal to that district,

You are hereby commanded to remove John Doe forthwith to the ————District of ————and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

————,
United States District Judge.

Dated at ———— this —— day of ———— 19—.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

UNITED STATES MAGISTRATES

Pub. L. 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28, Judiciary and Judicial Procedure, as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28.

FORM 15—SEARCH WARRANT (UNDER RULE 41)

To ————:

Affidavit having been made before me by John Doe that he has reason to believe that on the premises known as ———— Street, in the city of ————, in the District of ————, there is now being concealed certain property, namely, certain dies, hubs, molds and plates, fitted and intended to be used for the manufacture of counterfeit coins of the United States, and as I am satisfied that there is probable cause to believe that the property so fitted and intended to be used is being concealed on the premises above described,

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search in the daytime, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this ———— day of ————.

————,
U.S. Magistrate for the ————
DISTRICT OF ————.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

UNITED STATES MAGISTRATES

Pub. L. 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28, Judiciary and Judicial Procedure, as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28.

FORM 16—MOTION FOR THE RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE

In the United States District Court for the ——— District of ———, ——— Division.

No. ———

John Doe hereby moves this Court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on the night of ———, 19—, at the premises known as ——— Street, in the city of ———, in the District of ———, was unlawfully seized and taken from him by two deputies of the United States Marshal for this District, whose true names are unknown to the petitioner, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

———,
Attorney for Petitioner.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 17—APPEARANCE BOND

In the United States District Court for the ——— District of ———, ——— Division.

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of ——— Dollars ($———).

The condition of this bond is that the defendant ——— is to appear in the United States District Court[1] for the ———District of ——— at ———[2] in accordance with all orders and directions of the Court[3] relating to the appearance of the defendant before the Court[3] in the case of *United States* v. ———, File number ——; and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the United States District Court for the ——— District of ——— against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this ——— day of ———, 19— at ———.

———(*Name of Defendant*) ——— (*Address*) ———, (*Name of Surety*) ——— (*Address*) ——— (*Name of Surety*) ——— (*Address*)

Signed and acknowledged before me this ——day of ———, 19—.

———.

Approved: ———.

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at ———; and that my net worth is the sum of ——— Dollars ($———).

I further say that ———[4]

———,
Surety.

Sworn to and subscribed before me this —— day of ———, 19 — at ———.

———

[1] If appearance is to be before a magistrate, change the words following "appears" to "before ——— , United States Magistrate."

[2] Insert place.

[3] Change "Court" to "Magistrate" if necessary. See Note 1.

[4] These lines are to provide for additional justification if the Magistrate or Court so directs.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

UNITED STATES MAGISTRATES

Pub. L. 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28, Judiciary and Judicial Procedure, as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28.

FORM 18—WAIVER OF INDICTMENT

In the United States District Court for the —— District of ———, ——— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE	No. ——— (18 U.S.C. § 408)*

John Doe, the above named defendant, who is accused of violating the National Motor Vehicle Theft Act, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

———,
Defendant.

———,
Witness.

———,
Counsel for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 19—MOTION BY DEFENDANT TO DISMISS THE INDICTMENT

In the United States District Court for the ——— District of ———, ——— Division.

UNITED STATES OF AMERICA *v.* JOHN DOE	No. ———

The defendant moves that the indictment be dismissed on the following grounds:

1. The court is without jurisdiction because the offense if any is cognizable only in the ———Division of the ——— District of ———.

2. The indictment does not state facts sufficient to constitute an offense against the United States.

———

*So in original. Now covered by sections 2312 and 2313 of this title.

3. The defendant has been acquitted (convicted, in jeopardy of conviction) of the offense charged therein in the case of *United States* v. ————in the District Court for the ——— District of ———, Case No. —— terminated on ——.

4. The offense charged is the same offense for which the defendant was pardoned by the President of the United States on —— day of ——, 19—.

5. The indictment was not found within three years next after the alleged offense was committed.

SIGNED: ————————,

————————.

Address

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 20—SUBPOENA TO TESTIFY

In the United States District Court for the —— District of ————, ———— Division.

To ————————:

You are hereby commanded to appear in the United States District Court for the ———— District of ———— at the Courthouse, in the city of ————, on the —— day of ———, 19— at 10 o'clock A.M. to testify in the case of *United States* v. *John Doe.*

This subpoena is issued on application of the (United States) (defendant).

————————,

Clerk.

BY ————————,

Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 21—SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

In the United States District Court for the —— District of ————, ———— Division.

To ————————:

You are hereby commanded to appear in the United States District Court for the District of ———— at the Courthouse, in the city of ————, on the —— day of ————, 19— at 10 o'clock A.M. to testify in the case of *United States* v. *John Doe* and bring with you

————————————————

————————————————

————————————————

————————————————

This subpoena is issued upon application of the (United States) (defendant).

————————,

Clerk.

BY ————————,

Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 22—WARRANT FOR ARREST OF WITNESS

In the United States District Court for the —— District of ————, ———— Division.

———— v. ———— } No. ————

To ————————:

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the ———— District of ———— in the city of ————, for the reason that he wilfully failed to appear after having been served with subpoena to appear at the trial of the case of *United States* v. *Roe* on the ——— day of ————, 19—.

You are further commanded to detain him in your custody until he is discharged by the Court.

Upon order of Honorable ————, United States District Judge at ———— this ——— day of ————, 19—.

————————,

Clerk.

BY ————————,

Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 23—MOTION FOR NEW TRIAL

In the United States District Court for the —— District of ————, ———— Division.

UNITED STATES OF AMERICA v. JOHN DOE } No. ————

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.

5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.

6. The court erred in charging the jury and in refusing to charge the jury as requested.

7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: the attorney for the government stated in his argument that the defendant had not taken the witness stand and that the defendant had been convicted of crime.

8. The court erred in denying the defendant's motion for a mistrial.

————————,

Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 24—MOTION IN ARREST OF JUDGMENT

In the United States District Court for the —— District of ————, ———— Division.

UNITED STATES OF AMERICA v. JOHN DOE } No. ————

The defendant moves the court to arrest the judgment for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. This court is without jurisdiction of the offense, in that the offense if any was not committed in this district.

————————,

Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORM 25—JUDGMENT AND COMMITMENT

In the United States District Court for the —— District of ————, ————Division.

UNITED STATES OF AMERICA
v.
JOHN DOE } No. ————

JUDGMENT AND COMMITMENT

On this —— day of ————, 19—, came the attorney for the government and the defendant appeared in person and[1] ————

————————————————————

It is Adjudged that the defendant has been convicted upon his plea of[2] ———— of the offense of ———— as charged[3] ————; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] ————————

————————————————————

It is Adjudged that[5] ————————

————————————————————

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

————————,

United States District Judge.

The Court recommends commitment to:[6]

————————————————————

————————,

Clerk.

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number ————" if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

[Endorsement]

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on ——— to ———.

Defendant noted appeal on ————.

Defendant released on ————.

Defendant elected, on ————, not to commence service of the sentence.

Defendant's appeal determined on ———.

Defendant delivered on ——— to ———at ————, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

————————,

United States Marshal.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

FORMS 26, 27. ABROGATED. DEC. 4, 1967, EFF. JULY 1, 1968

NOTES OF ADVISORY COMMITTEE ON RULES

These forms relate to appellate procedure and are no longer appropriate in the Federal Rules of Criminal Procedure.

RULES OF PROCEDURE FOR THE TRIAL OF MINOR OFFENSES BEFORE UNITED STATES MAGISTRATES

Adopted and Effective January 27, 1971

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5. Orders Subject to Rehearing by District Judges.
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   (c) Stay of Execution; Release Pending Appeal.
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10. Records.
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   (a) Local Rules by District Courts.
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Rule 1. Scope

These rules govern the procedure and practice for the trial of minor offenses (including petty offenses) before United States magistrates under Title 18, U.S.C. § 3401, and for appeals in such cases to judges of the district courts. To the extent that pretrial and trial procedure and practice are not specifically covered by these rules, the Federal Rules of Criminal Procedure apply as to minor offenses other than petty offenses. All other proceedings in criminal matters, other than petty offenses, before United States magistrates are governed by the Federal Rules of Criminal Procedure.

CROSS REFERENCES

Jurisdiction of magistrates to try persons accused of minor offenses, see section 3401 of this title.

Supreme Court to prescribe rules of procedure for trials before magistrates, see section 3402 of this title.

Rule 2. Minor Offenses Other Than Petty Offenses

(a) Complaint or Information

The trial of a minor offense, other than a petty offense, may proceed on a complaint filed with the magistrate or on an information filed with the clerk of the district court. The district court, by order or local rule, may make provision for the reference of such information to a magistrate.

(b) Appearance

Upon the defendant's appearance, the magistrate shall inform him of the complaint or information against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and the general circumstances under which he may secure pretrial release. The magistrate shall also explain to the defendant that he has a right to trial before a judge of the district court and a jury and, if the prosecution is on a complaint, that he has a right to have a preliminary examination before the magistrate unless he consents to be tried before the magistrate.

(c) Consent; Arraignment

If the defendant signs a written consent to be tried before the magistrate which specifically waives trial before a judge of the district court and a jury, the magistrate shall take the defendant's plea to the charge set forth in the complaint or information. The defendant may plead not guilty, guilty or, with the consent of the magistrate, *nolo contendere.* If the defendant indicates a desire to plead guilty or *nolo contendere,* the magistrate shall proceed in accordance with the requirements of Rule 11 of the Federal Rules of Criminal Procedure. If the defendant pleads not guilty, the magistrate shall either conduct the trial immediately or fix a time for the trial.

(d) Trial

(1) *Date of trial.* The date of trial shall be fixed at such time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.

(2) *Procedure.* The trial shall be conducted as are trials of criminal cases in the district court by a district judge without a jury.

(3) *Record.* Proceedings under this rule shall be taken down by a reporter or recorded by suitable sound recording equipment.

Rule 3. Petty Offenses

(a) Complaint or Citation

The trial of a petty offense may proceed on an information filed with the clerk of the district court or on a complaint, citation, or violation notice filed with the magistrate.

(b) Consent; Arraignment

The magistrate shall state to the defendant the charge against him and shall inform the defendant of his right to counsel and to a trial in the district court. If the defendant signs a written consent to be tried before the magistrate

which specifically waives trial before a judge of the district court, the magistrate shall take the defendant's plea to the charge. The defendant may plead not guilty, guilty or, with the consent of the magistrate, *nolo contendere.* If the defendant pleads not guilty, the magistrate shall either conduct the trial immediately or fix a time for the trial, giving due regard to the needs of the parties to consult with counsel and to prepare for the trial.

(c) Trial

(1) *Procedure.* The trial shall be conducted as are trials of petty offenses in the district court by a district judge without a jury.

(2) *Record.* Unless the defendant waives in writing the keeping of a verbatim record, proceedings under this rule shall be taken down by a reporter or recorded by suitable sound recording equipment.

Rule 4. Warrant or Summons

(a) Citation or Violation Notice

If a defendant fails to appear in response to a citation or violation notice, a summons or a warrant for his arrest may be issued by the magistrate. No warrant may issue unless the essential facts of the offense charged in the citation or violation notice establish probable cause and are supported by oath.

(b) Failure to Appear

If a defendant fails to appear before the magistrate when summoned or otherwise ordered by the magistrate to appear, the magistrate may summarily issue a warrant for his immediate arrest and appearance before the magistrate.

Rule 5. Orders Subject to Rehearing by District Judges

A decision or order by a magistrate which, if made by a judge of the district court, could be appealed by the government under any provision of law, shall be subject to rehearing *de novo* by a judge of the district court upon motion for such renearing filed with the magistrate by the attorney for the government within 10 days after the entry of the order. Upon the filing of such a motion, the magistrate shall promptly transmit the motion and all records in the case to the clerk of the district court. The magistrate shall not proceed further with the case until the matter to be reheard, including any available appeal, has been determined.

Rule 6. Transfer of Cases

(a) Minor Offenses other than Petty Offenses

Cases of minor offenses, other than petty offenses, may, upon transfer under Rule 20 of the Federal Rules of Criminal Procedure, be referred to a magistrate for plea and sentence, if authorized by rule or order of the district court.

(b) Petty Offenses

A defendant charged with a petty offense who is arrested, held, or present in a district other than that in which an information, complaint, citation, or violation notice is pending against him may state in writing before a magistrate that he wishes to plead guilty or *nolo contendere,* to waive trial in the district in which the proceeding against him is pending, and to consent to disposition of the case in the district in which he was arrested, is held, or is present. The magistrate shall thereupon transmit the statement to the magistrate before whom the proceeding is pending. Upon receipt of the defendant's statement, the magistrate before whom the proceeding is pending shall transmit the papers, or certified copies thereof, to the clerk of the district court for the district in which the defendant was arrested, is held, or is present for reference to a magistrate and the proceeding shall continue in that district.

(c) Not Guilty Plea after Transfer

If, after the proceeding has been transferred pursuant to this rule, the defendant pleads not guilty, the magistrate shall send the papers to the clerk of the district court for return to the magistrate in the district where the proceeding was originally commenced for restoration to the docket. The defendant's statement that he wishes to plead guilty or *nolo contendere* shall not be used against him.

Rule 7. New Trial

The magistrate, on motion of a defendant, may grant a new trial if required in the interest of justice. The magistrate may vacate the judgment if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within 180 days after final judgment, but if an appeal is pending the magistrate may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after a finding of guilty or within such further time as the magistrate may fix during the 7-day period.

Rule 8. Appeal

(a) Notice of Appeal

An appeal from a judgment of conviction by a magistrate to a judge of the district court shall be taken within 10 days after entry of the judgment. An appeal shall be taken by filing with the magistrate a notice stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney, personally or by mail.

(b) Record

The magistrate shall forward to the clerk of the district court the original papers and exhibits in the case together with any transcript, tape, or other recording of the proceedings, and a certified copy of the docket entries. These shall constitute the record on appeal. Any expense in connection therewith shall be borne by the government.

(c) Stay of Execution; Release Pending Appeal

The provisions of Rule 38(a) of the Federal Rules of Criminal Procedure relating to stay or execution shall be applicable to a judgment of conviction entered by a magistrate. The defendant may be released pending appeal by the magistrate or a district judge in accordance

with the provisions of law relating to release pending appeal from a judgment of conviction of a district court.

(d) Scope of Appeal

The defendant shall not be entitled to a trial *de novo* by the judge of the district court. The scope of appeal shall be the same as on an appeal from a judgment of a district court to a court of appeals.

Rule 9. Payment of Fixed Sum in Lieu of Appearance

When authorized by local rules of the district courts in cases of petty offenses as defined in Title 18, U.S.C., § 1(3), payment of a fixed sum may be accepted in lieu of appearance and as authorizing the termination of the proceeding.

Rule 10. Records

The magistrate shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, may prescribe.

Rule 11. Rules of Court

(a) Local Rules by District Courts

Rules adopted by a district court for the conduct of trials before magistrates shall not be inconsistent with these rules. Copies of all rules made by a district court shall, upon their promulgation, be filed with the clerk of the district court and furnished to the Administrative Office of the United States Courts.

(b) Procedure Not Otherwise Specified

If no procedure is especially prescribed by rule, the magistrate may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

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